R28. Administrative Services, Fleet Operations, Surplus Property.
R28-1. State Surplus Property Disposal.
R28-1-1. Purpose.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property. It applies to all state and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with state surplus property.

R28-1-2. Authority.

Under the provisions of Title 63A, Chapter 9, Part 8, the Utah State Agency for Surplus Property (USASP) within the Division of Fleet Operations, under the Department of Administrative Services is responsible for operating both a state and a federal surplus property program. The standards and procedures governing the operation of these two programs are found in two separate State Plans of Operation, one for state surplus property and a second plan for federal surplus property, the latter being a contract between the state and federal government. The State Plans of Operation may be reviewed at the USASP.

R28-1-3. Definitions.

A. As used in this section "Personal handheld electronic device":

1. means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

2. includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

R28-1-4. Procedures.

A. State-owned personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of without first submitting a properly completed form SP-1 to and receiving authorization from the USASP.

This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

B. When a department or agency of state government determines that state-owned personal property is in excess to current needs, they will make such declaration using Form SP-1. State-owned personal property shall not be processed by the USASP unless the appropriate form is executed.

C. A standard form SP-3 is required when it is determined that state-owned personal property should be abandoned and destroyed. The SP-3 is generated by the USASP after receiving a form SP-1 and reviewing the property being disposed of by the agency.

D. State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries by the owning agency. However, a form SP-1 must still be completed and forwarded to the USASP to account for the transfer of the equipment. In such cases, the USASP will not assess a fee. Similarly, the USASP is authorized to donate computer equipment received as surplus property from agencies to schools that have submitted requests for computer equipment directly to the USASP.

E. Pursuant to the provisions of section 63A-9-808.1, state-owned information technology equipment may be transferred directly to Non-profit entities for distribution to, and use by, persons with a disability as defined in subsections 62A-5-101(4)(a)(i) and (ii). However, interagency transfers and sales of surplus property to state and local agencies within the 30-day period under section 63A-9-808 shall have priority over transfers under this subsection. The 30-day holding period may be waived if shown to be in the best interest of the state.

F. Requests for state-owned information technology equipment from non-profit entities shall be:

1. Submitted, in writing, on the non-profit entity's official letterhead, to the Department of Human Services, Division of Services for People with Disabilities (DSPD);

2. Reviewed and approved by DSPD and forwarded to the USASP manager to properly track and arrange for distribution.

G. State agencies transferring state-owned information technology equipment to non-profit entities for distribution to, and use by persons with a disability as defined in subsections 62A-5-101(4)(a)(i) and (ii), shall provide the USASP with completed SP-1 forms in order to account for the transfer of said equipment. In such cases, the USASP will not assess a fee to the donating agency.

H. Pursuant to the provisions of subsection 63A-9-808.1(4), the USASP shall prepare an annual report to DSPD containing the names of non-profit entities that received state-owned information technology equipment under subsection 63A-9-808.1(2), and the types and amounts of equipment received.

I. Prior to submitting information technology equipment to Surplus Property, or donating it directly to the public institutions, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.

J. Federal surplus property is not available for sale to the general public, on a day-to-day basis. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program. Public auctions of federal surplus property are authorized under certain circumstances and conditions. The USASP Manager shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

K. This section sets forth policy and procedure, which governs the sale of personal handheld electronic devices to a user who is provided such a device by an agency, and who subsequently leaves or changes employment. These personal handheld electronic devices usually rely on technology that is rapidly changing, resulting in the devices becoming continuously outdated as more capable devices are offered; therefore, their value depreciates significantly over the period of their service. Their usefulness is generally tied to a service contract with a service provider.

1. Personal handheld electronic device and related accessories and software may be purchased by the assigned user upon a change in employment status including termination, retirement, or transfer to another agency within state government; provided that the issuing agency is not obligated to continue the terms of the service contract.

2. Purchase of a handheld device is exempt from the requirements of related party transactions under R28-1-5.

3. Prior to a purchase of a handheld device, the following requirements shall be completed in substantially the following order:

a. the agency that assigned or provided the personal handheld electronic device shall:

i. authorize, in writing to USASP, the sale to the assigned user in lieu of exchange or surplus;

ii. submit an SP-1 to USASP with a description of the items to be included in the sale of the personal handheld electronic device including the make, model, serial number, specifications (if available), list of accessories, software; and

iii. remove, or cause to be removed, from the personal handheld electronic device any:

(A) software owned or licensed by the agency as required by the software license agreement;

(B) information that is classified as protected, private, or controlled under the Title 63, Chapter 2, Government Records Access and Management Act; and

(C) Ensure in writing that the service contract is null and void to the issuing agency or transferable to the purchaser.

b. The USASP shall:

i. have an established fee that has been approved by the Department of Administrative Services Rate Committee;

ii. receive the SP-1 form, and;

iii. generate an invoice for the transaction upon receiving full payment of the fee from the designated purchaser of the device.

c. The designated purchaser of the device shall:

i. make full payment of the fee to the USASP for the item, and;

ii. sign the invoice and return the signed invoice to USASP.

d. The agency may be authorized by the division to transfer ownership of the personal handheld electronic device to the designated purchaser of the device.

L. The USASP Manager or designee may make an exception to the written authorization requirement identified in paragraph A above. Exceptions must be for good cause and must consider:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-5. Related Party Transactions.

A. The USASP has a duty to the public to ensure that State-owned surplus property is disposed of at fair market value, in an independent and ethical manner, and that the property or the value of the property has not been misrepresented. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

B. A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property in question:

1. Has purchasing authority.
2. Has maintenance authority.
3. Has disposition or signature authority.
4. Has authority regarding the disposal price.
5. Has access to restricted information.
6. Is perceived to be a related party using other criteria which may prohibit independence.

C. Owning state agencies may list any recommended purchasers on the standard form SP-1 Final decision rests with USASP as to selling price and buyer.

D. When a prospective purchaser is identified or determined to be a related party, the USASP will employ one of the following procedures:

1. The USASP may require written justification and authorization from the Department or Division Head or authorized agent. Justification may include reference to maintenance history, purchase price and the absence of conflicts of interest. If the related party is an authorized agent, a higher approval may be sought.

2. The USASP may choose to hold the property for sale by public auction or sealed bid. The prospective buyer may then compete against other bidders.

3. The USASP may hold the property for a 30-day period before allowing the related party the opportunity to purchase the property, thus allowing for purchase of the property in accordance with the priorities listed below. The 30-day holding period may be waived if shown to be in the best interest of the state.

R28-1-6. Priorities.

A. Public agencies are given priority for the purchase of state-owned surplus property.

B. Property received by the USASP that is determined to be unique, in short supply or in high demand by public agencies shall be held for a period of 30 days before being offered for sale to the general public. The 30-day holding period may be waived if shown to be in the best interest of the state.

C. For this rule, the entities listed below, in priority order, are considered to be public agencies:

1. State Agencies
2. State Universities, Colleges, and Community Colleges
3. Other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies
4. Other tax supported educational entities
5. Non-profit health and educational institutions

D. State-owned personal property that is not purchased by or transferred to public agencies during the 30-day hold period may be offered for public sale. The 30-day holding period may be waived if shown to be in the best interest of the state.

E. The USASP Manager or designee shall make the determination as to whether property is subject to the 30-day hold period. The decision shall consider the following:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-7. Accounting and Reimbursement.

A. The USASP will record and maintain records of all transactions related to the acquisition and sale of all state and federal surplus property. A summary of the total yearly sales of state surplus by agency or department will be provided to the legislature following the close of each fiscal year.

B. Reimbursements to state agencies from the sale of their surplus property will be made through the Division of Finance on interagency transfers or warrant requests. The Surplus Agency is authorized to deduct operating costs from the selling price of all state surplus property. In all cases property will be priced to sale for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

C. Deposits from cash sales will be made to the State Treasurer in accordance with Title 51, Chapter 7.

D. The USASP may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the Surplus Agency accumulates funds in excess of the allowable working capital reserve, they will reduce their service and handling charge to under recover operating expenses and reduce the Retained Earnings balance accordingly. The only exception is where the USASP is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the USASP must obtain the written approval of the Executive Director of the Department of Administrative Services.

R28-1-8. Payment.

A. Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and business or personal checks. may not be accepted for amounts exceeding $200. Two-party checks shall not be accepted.

B. Payment received from state subdivisions shall be in the form of agency or subdivision check or purchasing card.

C. Payment made by public purchasers shall be at the time of purchase and prior to removal of the property purchased. Payment for purchases by state subdivisions shall be within 60 days following the purchase and removal of the property.

D. The USASP Manager or designee may make

exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

1. The cost to the state;
2. The potential liability to the state;
3. The overall best interest of the state.

R28-1-9. Bad Debt Collection.

A. The USASP shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the USASP for "insufficient funds".

B. In the event that a check is returned to the USASP is returned for "insufficient fund," the USASP may:

1. Prohibit the debtor from making any future purchases from the USASP until the debt is paid in full.

2. Have division accountant send a certified letter to the debtor stating that:

(a) the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and

(b) If the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

C. Debts for which payments have not been received in full within the 15 day period referred to above, shall be assigned to the Office of State Debt Collection in accordance with statute.

R28-1-10. Public Sales of Surplus Property.

A. State-owned surplus property may be purchased at any time by the general public, subject to any 30-day holding period that may be assigned by USASP management. The 30-day holding period may be waived if shown to be in the best interest of the state.

B. At the discretion of the USASP Manager, any state-owned surplus property may be sold to the general public by auction, sealed bid, or other acceptable method. Property to be auctioned may be consigned out to an auction service. If a consignment approach is considered, the USASP Manager must ensure that the auction service is contracted by and authorized by the Division of Purchasing.

C. Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

D. The frequency of public auctions, for either State-owned or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory at the USASP, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

KEY: state property
August 2, 2006 63A-9-801
Notice of Continuation March 5, 2002 63A-9-808.1

R35. Administrative Services, Records Committee.
R35-1. State Records Committee Appeal Hearing Procedures.
R35-1-1. Scheduling Committee Meetings.

(1) The Executive Secretary shall respond in writing to the notice of appeal within five business days.

(2) Two weeks prior to the Committee meeting or appeal hearing the Executive Secretary shall send a notice of the meeting to at least one newspaper of general circulation within the geographic jurisdiction.

(3) One week prior to the Committee meeting or appeal hearing the Executive Secretary shall post a notice of the meeting indicating the agenda, date, time and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements will be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed thirty minutes to present testimony and evidence and to call witnesses.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The government entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the government entity contends they have not been identified with reasonable specificity, the government entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations shall be permitted. At the conclusion of the testimony presented, the Committee Chair shall ask for statements from any third party. Third party presentations shall be limited to ten minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically pursuant to Utah Code Section 52-4-7.8.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more members of the Committee or a party may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Chair.

(13) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the government entity in writing no later than two days prior to the scheduled hearing date. Failure to comply with this provision may result in a Committee order requiring that the petitioner pay the government entity's reasonable costs and expenses. The Committee will ordinarily deny a government entity's request to postpone the hearing, unless the government entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within five business days after the hearing. Copies of the Decision and Order will be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) All meetings of the Committee shall be recorded. Access to the audio recordings shall be provided by the Executive Secretary at the Utah State Archives, Research Center.

(2) Written minutes of the meetings and appeal hearings shall be maintained by the Executive Secretary. A copy of the approved minutes shall be made available for public access at the Utah State Archives.

KEY: government documents, state records committee, records appeal hearings
August 9, 2006 63-2-502(2)(a)
Notice of Continuation July 2, 2004

R58. Agriculture and Food, Animal Industry.
R58-2. Diseases, Inspections and Quarantines.
R58-2-1. Authority.

Promulgated Under the Authority of Sections 4-31-15 and 4-31-17 and Subsection 4-2-2(1)(c)(ii).

R58-2-2. Reportable and Quarantinable Animal Diseases.

A. Reporting of Diseases. It shall be the responsibility of veterinary diagnostic laboratories, veterinary practitioners, livestock inspectors, and livestock owners to report immediately by phone or written statement to the Department of Agriculture and Food any of the diseases listed on the Utah Department of Agriculture and Food Reportable Disease list, available at the Utah Department of Agriculture and Food, Division of Animal Health, PO Box 146500, 350 North Redwood Road, Salt Lake City, UT 84114-6500.

1. All swine moving within the State of Utah shall be identifiable to determine the farm of origin as per 9 CFR,1,71.19, January 1, 2002, edition which is hereby adopted and is incorporated by reference within this rule.

2. All sheep moving within the State of Utah shall, upon change of ownership, comply with federal Scrapie identification requirements as listed in 9 CFR Part 79, January 1, 2002, requiring official identification to determine the farm of origin.

3. Sheep from Scrapie infected, exposed, quarantined or source flocks may not be permitted to move into or within the state, except to slaughter, unless a flock eradication and control plan, approved by the State Veterinarian in Utah, has been implemented in the flock where the diseased animal resides.

4. Any live scrapie-positive, suspect, or high-risk sheep of any age and any sexually intact exposed sheep of more than one year of age shall be required to possess official individual identification as listed in 9 CFR Part 79, January 1, 2002.

B. Quarantines. The Department of Agriculture and Food or its agent may issue quarantines on:

1. Any animal infected with diseases listed on the reportable disease list or any infectious or dangerous entity which is determined to be a threat to other animals or humans.

2. Any animal which it believes may jeopardize the health of other animals, or humans.

3. Any area within the State of Utah to prevent the spread of infectious or contagious diseases.

a. Quarantines shall be deemed issued to owners or caretakers of animals affected with or exposed to infectious, contagious, or communicable diseases by serving an official notice of quarantine to the owner or caretaker in person, by phone, by public meetings, or by registered mail to his last known address.

b. On and after the effective date of quarantine no animals shall be moved or allowed to be moved from or onto the quarantined premises without the owner or caretaker of the quarantined livestock having first obtained a written permit from the Utah Department of Agriculture and Food or its authorized agent to move the animals.

c. Quarantines shall be released upon compliance with Section 4-31-17; as well as with 9 CFR 71.2, January 1, 2002, edition; and the Utah Health Code Sections 26-6, 19-4 and 19-5.

KEY: quarantines
February 1, 2005 **4-31-15**
Notice of Continuation August 15, 2006 **4-31-17**
4-2-2(1)(c)(ii)

R58. Agriculture and Food, Animal Industry.
R58-4. Use of Animal Drugs and Biologicals in the State of Utah.
R58-4-1. Authority.

Promulgated under authority of Section 4-5-17 and 9 CFR 101, 102 and 103, January 3, 2001 edition.

R58-4-2. Manufacturing, Induction Specifications.

A. No person, firm, corporation, or other company shall manufacture in this state or transport or introduce into the state, in any manner, any virus or bacterial product carrying infective agents of infectious, contagious, or communicable diseases of domestic animals or poultry without first being licensed by Biologics Division of United States Department of Agriculture and Food-Animal Plant Health Inspection Service (USDA-APHIS) and obtaining a written permit from the Commissioner of Agriculture and Food.

R58-4-3. Registration Requirements.

Veterinary practitioners, or other persons, firms, corporations, or manufacturers, except those licensed within the State of Utah, engaged in the distribution or manufacture of animal biologics, including diagnostic tests, carrying infective agents, or inactivated agents, for the prevention, treatment or control of contagious, infectious or communicable disease of livestock shall register their names and receive written authority from the Commissioner of Agriculture and Food.

KEY: disease control
August 15, 1997 4-5-2
Notice of Continuation August 15, 2006 4-5-17

R58. Agriculture and Food, Animal Industry.
R58-14. Holding Live Raccoons or Coyotes in Captivity.
R58-14-1. Authority.

A. Promulgated under authority of Subsection 4-2-2(1)(j) and Section 4-23-11.

B. Scope: It is the intent of this rule to protect the health and safety of individuals by prohibiting the holding of a raccoon or coyote in captivity except as provided by this rule.

R58-14-2. Definitions.

For the purpose of this rule the following definitions apply:

A. Division means the Division of Wildlife Resources.

B. Person means an individual, association, partnership, government agency, or corporation, or any agent of the foregoing.

C. Possession means actual and constructive possession.

D. Raccoon means a depredating animal.

E. Coyote means a predatory animal.

F. Animal means raccoon or coyote.

G. Captivity means possession.

H. Unpermitted animal means a raccoon or coyote possessed by a person without a valid permit issued by the Department of Agriculture and Food for each individual animal.

R58-14-3. General.

The Division of Wildlife Resources, with the cooperation of the Department of Agriculture and Food and the Department of Health shall enforce this rule.

A. The Agricultural and Wildlife Damage Prevention Board, by authority granted under 4-23, declares it unlawful to import, distribute, relocate or possess live raccoons or coyotes except as provided by this rule.

B. Upon filing an application for registration with the Department of Agriculture and Food, upon forms provided by the department, a permit may be issued by the department authorizing the applicant to hold in live captivity raccoons or coyotes for research, educational, zoos, circuses, or other purposes authorized by the Department of Agriculture and Food.

C. A separate permit must be obtained from the department for each individual raccoon and coyote possessed, and the permit is valid only for the individual raccoon or coyote for which the permit was originally issued.

D. A person issued a permit to possess a live raccoon or coyote may not lend, sell, lease, assign, give, or otherwise transfer the permit, or any rights granted by the permit, to an other person.

E. A person may not use or attempt to use the permit of an other person.

F. Nuisance raccoons and coyotes may not be relocated following capture, but may be captured and euthanized or otherwise destroyed on location where capture is unfeasible.

G. Unpermitted animals may be seized immediately by the Division of Wildlife Resources, the Department of Health, the Department of Agriculture and Food, animal control officers, or peace officers where the person possessing the animal cannot produce, for each raccoon or coyote a valid permit issued for that particular animal.

(1) At the time the citation is issued, the aggrieved party may sign and indicate on the citation intent to seek administrative review. Within fourteen days aggrieved party must make a written request to the Department of Agriculture and Food, pursuant to 4-1-3.5, to schedule an informal adjudicative proceeding to review the seizure of any unpermitted animal.

(2) Unpermitted animals seized by the Division of Wildlife Resources, the Department of Health, the Department of Agriculture and Food, an animal control officer, or a peace officer may be held and boarded by the state where the possessor verifies in writing at the time of seizure his or her intention to seek administrative review of the seizure under R58-14-3 G(1), and further agrees to compensate the state for all reasonable costs associated with boarding the subject animal during the pendency of the review process. In instances where the final adjudicative order finds possession of the subject animal lawful under these rules, all boarding expenses paid to the state under this section will be refunded.

(3) Unpermitted animals seized by the Division of Wildlife Resources, the Department of Health, or the Department of Agriculture and Food may be euthanized if the possessor does not verify at the time of seizure his or her intention to seek administrative reviews of the seizure under R58-14-3(1), or refuses to reimburse the state for the costs associated with boarding the animal.

(4) Unpermitted animals held or boarded by the state pursuant to R58-14-3 G(2) may be euthanized where the party fails to timely file a request provided under 4-1-3.5, or where remedies have been exhausted and the final order finds possession of the animal in violation of statute or this rule.

H. Any raccoon or coyote that bites or scratches a person or domestic animal shall be handled in accordance with R386-702-5.

R58-14-4. Penalty.

Any violation of this rule is a Class B Misdemeanor.

KEY: administrative procedure, enforcement
July 18, 2000 4-2-2(1)(j)
Notice of Continuation August 29, 2006 4-23-11

R65. Agriculture and Food, Marketing and Development.
R65-7. Horse Racing.
R65-7-1. Authority.

Promulgated under authority of Section 4-38-4.

R65-7-2. Definitions.

The following definitions shall apply in these rules unless otherwise indicated.

1. "Act" means the Utah Horse Regulation Act.

2. "Added money" means all monies added to the fees paid by the horsemen into the purse for a race.

3. "Age" of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.

4. "Also Eligible" pertains to (a) a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to scratch time deadline; (b) the next preferred nonqualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

5. "Arrears" means money past due for entrance fees, jockey fees, or nomination or supplemental fees in nomination races, and therefore in default incidental to these Rules or the conditions of a race.

6. "Authorized Agent" means a person appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the Agent will act. Said instrument must be on file with the Commission and its authorized representatives.

7. "Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

8. "Breeder" of a horse is the owner or lessee of its dam at the time of breeding.

9. "Closing" means the time published by the organization after which nominations or entries will not be accepted for a race.

10. "Commission" means the Utah Horse Racing Commission.

11. "Commissioner" means a member of the Commission.

12. "Conditions of a race" are the qualifications which determine a horse's eligibility to enter.

13. "Day" is a period of 24 hours beginning at midnight.

14. "Race day" is a day during which horse races are conducted.

15. "Declaration" means the act of withdrawing an entered horse from a race before the closing of overnight entries.

16. "Drug (Medication)" means a substance foreign to the normal physiology of the horse.

17. "Enclosure" means all areas of the property of an organization licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the organization licensee.

18. "Entry" means a horse made eligible to run in a race.

19. "Family" means a husband, wife and any dependent children.

20. "Field" means all horses competing in a race.

21. "Financial Interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity, or other compensation or remuneration from any person.

22. "Foreign Substances" are all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include but not be limited to all narcotics, stimulants, or depressants.

23. "Foul" means an action by any horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

24. "Horse" means an equine of any breed and includes a stallion, gelding, mare, colt, filly, spayed mare or ridgeling.

25. "Horse Racing" means any type of horse racing, including Arabian, Appaloosa, Paint, Pinto, Quarter Horse, and Thoroughbred horse racing.

26. Horse Racing Types:

A. "Appaloosa Horse Racing" means the form of horse racing in which each participating horse is an Appaloosa horse registered with the Appaloosa Horse Club or any successor organization and mounted by a jockey.

B. "Arabian Horse Racing" means the form of horse racing in which each participating horse is an Arabian horse registered with the Arabian Horse Club Registry of America and approved by the Arabian Horse Racing Association of America or any successor organization, mounted by a jockey, and engaged in races on the flat over a distance of not less than one-quarter mile or more than four miles.

C. "Paint Horse Racing" means the form of horse racing in which each participating horse is a Paint horse registered with the American Paint Horse Association or any successor organization and mounted by a jockey.

D. "Pinto Horse Racing" means the form of horse racing in which each participating horse is a Pinto horse registered with the Pinto Horse Association of America, Inc., or any successor organization and mounted by a jockey.

E. "Quarter Horse Racing" means the form of horse racing where each participating horse is a Quarter Horse registered with the American Quarter Horse Association or any successor organization, mounted by a jockey, and engaged in a race over a distance of less than one-half mile.

F. "Thoroughbred Horse Racing" means the form of horse racing in which each participating horse is a Thoroughbred horse registered with the Jockey Club or any successor organization, mounted by a Jockey, and engaged in races on the flat.

27. "Inquiry" means the stewards immediate investigation into the running of a race which may result in the disqualification of one or more horses.

28. "Jockey" means the rider licensed to race.

29. "Jockey Agent" means a licensed authorized representative of a jockey.

30. "Lessee" means a licensed owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the registration certificate and on file with the Commission.

31. "Lessor" means the owner of the horse that is leased.

32. "Maiden" means a horse that has never won a race recognized by the official race records of the particular horse's breed registry. A maiden which has been disqualified after finishing first is still a maiden.

33. "Minor" means any individual under 18 years of age.

34. "Nominator" means the person who nominated the horse as a possible contender in a race.

35. "Objection" means:

A. A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered;

B. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owners licensed Authorized Agent before the race is declared official.

36. "Occupation License" means a requirement for any person acting in any capacity within the enclosure during the race meeting.

37. "Occupation Licensee" means a person who has obtained an occupation license.

38. "Utah Bred Horse" means a horse that is sired by a stallion standing in Utah.

39. "Organization License" means a requirement of any person desiring to conduct a race meeting within the state of Utah.

40. "Organization Licensee" means any person receiving an organization license. Owner is any person who holds, in whole or in part, any rights title or interest in a horse, or any lessee of a horse who has been duly issued a currently valid owner's license as a person responsible for such horse.

41. "Person" means any individual, corporation, partnership, syndicate, another association or entity.

42. "Post Position" means the position in the starting gate assigned to the horse for the race.

43. "Post Time" means the advertised time for the arrival of the horses at the start of the race.

44. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R65-7-10(8).

45. "Race Meeting" means the entire period of time not to exceed 20 calendar days separating any race days for which an organization license has been granted to a person by the Commission to hold horse racing.

46. "Allowance" means a race in which eligibility and/or the weight to be carried are based upon the horse's past performance over a specified time.

47. "Handicap" means a race in which the weights to be carried by the entered horses are assigned according to the Racing Secretary's evaluation of each horse's potential for the purpose of equalizing their respective chances of winning.

48. "Invitational" means a race in which the competing horses are selected by inviting their owners to enter specific horses.

49. "Match" means a race contest between two horses with prior consent by the Commission under conditions agreed to by the owners.

50. "Nomination" means a race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least 72 hours before the first post time of the day the race is originally scheduled to be run.

51. "Progeny" means a race restricted to the offspring of a specific stallion or stallions.

52. "Purse Race (Overnight)" means any race in which entries close less than 72 hours prior to its running.

53. "Schooling Race" means a preparatory race for entry qualification in official races which conform to requirements adopted by the Commission.

54. "Stakes" means a race which is eligible for stakes or "black-type" recognition by the particular breed registry.

55. "Trials" means a set of races in which eligible horses compete to determine the finalists for a purse in a nominated race.

56. "Restricted Area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to, the barn area, paddock, test barn, Stewards Tower, race course, or any other area designated restricted by the organization licensee and/or the Commission. Signs giving notice of restricted access shall be prominently displayed at all entry points.

57. "Rules" means the rules herein prescribed and any amendments or additions.

58. "Scratch" means the act of withdrawing an entered horse from a race after the closing of overnight entries.

59. "Scratch Time" means the deadline set by the organization licensee for the withdrawing of entered horses.

60. "Starter" means the horse whose stall door of the starting gate opens in front of such horse at the time the starter (the Official) dispatches the horses.

61. "Subscription" means the act of nominating a horse to a nomination race.

62. "Week" means a period of seven days beginning at 12:01 a.m., Monday during which races are conducted.

R65-7-3. Commission Powers and Jurisdiction.

1. Description and Powers. The Utah Horse Racing Commission is an administrative body created by Section 4-38-3. The Commission consists of five members which are appointed by the governor, confirmed by the senate, and whose powers and duties are prescribed by the legislature. The Commission appoints an executive director who is the administrative head of the agency, and the Commission determines the duties of the executive director. The Commission shall have supervision of all race meetings held in the State of Utah, and all occupation and organization licensees in the State and all persons on the property of an organization licensee.

2. Jurisdiction. Without limitations by specific mention hereof, the stated purposes of the Rules and Regulations hereby promulgated are as follows:

A. To encourage agriculture and breeding of horses in this State; and

B. To maintain race meetings held in the State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; and

C. To maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and

D. To generate public revenues.

E. Commission jurisdiction of a race meet commences one hour prior to post time and ends one hour following the last posted race.

3. Controlling Authority. The law, the rules, and the orders of the Commission supersede the conditions of a race meeting and govern Thoroughbred, Quarter Horse, Appaloosa, Arabian, Paint and Pinto racing, except in the event it can have no application to a specific type of racing. In the latter case, the Stewards may enforce rules or conditions of The Jockey Club for Thoroughbred racing, the American Quarter Horse Association for Quarter Horse racing; the Appaloosa Horse Club for Appaloosa racing; the Arabian Horse Racing Association of America for Arabian racing; the American Paint Horse Association for Paint racing; and the Pinto Horse Association of America, Inc., for Pinto racing; if such rules or conditions are not inconsistent with the Laws of the State of Utah and the Rules of the Commission.

4. Punishment By The Commission. Violation of the Act and rules promulgated by the Commission, whether or not a penalty is fixed therein, is punishable in the discretion of the Commission by denial, revocation or suspension of any license; by fine; by exclusion from all racing enclosures under the jurisdiction of the Commission; or by any combination of these penalties. Fines imposed by the Commission shall not exceed $10,000 against individuals for each violation, any Rules or regulations promulgated by the Commission, or any Order of the Commission; or for any other action which, in the discretion of the Commission, is a detriment or impediment to horse racing, according to Subsection 4-38-9(2).

5. Extension For Compliance. If a licensee fails to perform an act or obtain required action from the Commission within the time prescribed therefore by these Rules, the Commission, at some subsequent time, may allow the performance of such act or may take the necessary action with the same effect as if the same were performed within the prescribed time.

6. Notice To Licensee. Whenever notice is required to be given by the Commission or the Stewards, such notice shall be

given in writing by personal delivery to the person to be notified or by mailing, Certified Mail, Return Receipt Requested, such notice to the last known address furnished to the Commission; or may be given as is provided for service of process in a civil proceeding in the State of Utah and pursuant to the Administrative Procedures Act.

7. Location For Information Or Filing With Commission. When information is requested or a notice in any matter is required to be filed with the Commission, such notice shall be delivered to an authorized representative of the Commission at an office of the Commission on or before the filing deadline. Offices of the Commission are currently located at: State of Utah, Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT 84116.

8. Public Inspection Of Documents. All forms adopted by the Commission together with all Rules and other written statements of policy or interpretation; and all final orders, decisions, and opinions, formulated, adopted or used by the Commission in the discharge of its functions are available for public inspection at the above office.

9. Forms And Instruction. The following forms and instructions for their use have been adopted by the Commission:

Apprentice Jockey Certificate
Authorized Agent Agreement
Fingerprint Card
Identifier's Daily Report
Lease Agreement
Occupation Licensee Application(s)
Occupation License Renewal Application(s)
Open Claim Certificate
Organization's Daily Report
Organization Licensee Application
Petition for Declaratory Ruling
Petition for Promulgation, Amendment or Repeal of Rule
Petition in and before the Utah Horse Commission
Postmortem Examination Report
Stable Name, Corporation, Partnership or Syndicate Registration Form
Stewards' Daily Report
Stewards' Hearing Notice
Stewards' Hearing Reports
Subpoena (Steward and Commission)
Test Barn Diuretic Approval Form

10. Forms for substituting petitions for promulgating or repealing of rules, and for requests for declaratory ruling are available at the Utah State Department of Agriculture and Food.

R65-7-4. Racing Organization.

1. Allocation Of Racing Dates. The Commission shall allocate racing dates for the conduct of horse race meetings within this State for such time periods and at such racing locations as the Commission determines will best serve the interests of the people of the State of Utah in accordance with the Utah Horse Act. Upon a finding by the Commission that the allocation of racing dates for any year is completed, the racing dates so allocated shall be subject to reconsideration or amendment only for conditions unforeseen at the time of allocation.

2. Application For License And Days To Conduct A Horse Race Meeting. Every person who intends to conduct a horse race meeting shall file such application with the Commission no later than August 1 of the preceding calendar year. Any prospective applicant for license and days to conduct a horse race meeting failing to timely file the application for license may be disqualified and its application for license refused summarily by the Commission.

3. Commission May Demand Information. The Commission may require any racing organization or prospective racing organization to furnish the Commission with a detailed proposal and disclosures as to its proposed racing program, purse, program, financial projections, racing officials, principals or shareholders, plants, premises, facility, finances, lease arrangements, agreements, contracts, and such other information as the Commission may require to determine the eligibility and qualification of the organization to conduct a race meeting; all in addition to that required in the application form set forth in Subsection R65-7-4(4) and as required by Section 4-38-4.

4. Application For Organization License. Any person desiring to conduct a horse race meeting where the public is charged an admission fee shall apply to the Commission for an organization license. The application shall be made on a form prescribed and furnished by the Commission. The application shall contain the following information:

A. The dates on which and location where the applicant intends to conduct the race meeting.

B. The name and mailing address of the person making the application.

1. If the applicant is a corporation, a certified copy of the Articles of Incorporation and Bylaws; the names and mailing addresses of all stockholders who own at least 3% of the total stock issued by the corporation, officers, and directors; and the number of shares of stock owned by each.

2. If the applicant is a partnership, a copy of the partnership agreement, and the names and mailing addresses of all general and limited partners with a statement of their respective interest in the partnership.

C. Description of photographic equipment, video equipment, and copies of any proposed lease or purchase contract or service agreement in connection therewith.

D. Copies of any agreements with concessionaires or lessees, together with schedules of rates charged for performance of any service or for sale of any article within the enclosure, whether directly or through the concessionaire.

E. Schedule of admission price(s) to be charged.

F. Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year. All financial information shall be accompanied by an unqualified opinion of a Certified Public Accountant; or if the opinion is given with qualifications, the reasons for the qualifications must be stated.

G. A schedule of stall rent, entry fees, or any other charges to be made to the horsemen or public not mentioned above.

H. Any other information the Commission may require. For applicants requesting to conduct non pari-mutuel racing, the licensee fee shall not be less than $25.00.

A separate application upon a form prescribed and furnished by the Commission shall be filed for each race meeting which such person proposes to conduct. The application, if made by a person, shall be signed and verified under oath by the person; and if made by more than one person or by a partnership, shall be signed and verified under oath by at least two of the persons or members of the partnership; and if made by an association, a corporation, or any other entity, shall be signed by the President, attested to by the Secretary under the seal of such association or corporation, if it has a seal, and verified under oath by one of the signing officers.

No person shall own any silent or undisclosed interest in any entity requesting an organization license. No organization license shall be issued to any applicant that fails to comply with provisions of this Rule. No incomplete license application shall be considered by the Commission.

I. In considering the granting or denying of all organization's application for a license to conduct horse racing

with the non pari-mutuel system of wagering, the following criteria, standards, and guides should be considered by the Commission:

1. Public Interest
a. Safety
b. Morals
c. Security
d. Municipal Comments
e. Revenues: State and Local
2. Track Location
a. Traffic Flow
b. Support Services (i.e., hotels, restaurants, etc.)
c. Labor Supply
d. Public Services (i.e., police, fire, etc.)
e. Proximity to Competition
3. Number of Tracks Running or Making Application
a. Size
b. Type of Racing
c. Days
4. Adequacy of Track Facilities
5. Experience in Racing of Applicant and Management
a. Length
b. Type
c. Success/Failure
6. Financial Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders (To Include Contract Services)
a. Financial History
(1) Records
(2) Net Worth
7. Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders (To Include Contract Services)
(1) Arrest Record
(2) Conviction Record
(3) Litigation Record (Civil/Criminal)
(4) Law Enforcement Intelligence
8. Official Attitude of Local Government Involved
9. Anticipated Effect Upon Breeding and Horse Industry in Utah
10. Effect on Saturation of Non pari-Mutuel Market
11. Anticipated Effect upon State's Economy
a. General Economy
(1) Tourism
(2) Employment
(3) Support Industries
b. Government Revenue
(1) Tax (Direct/Indirect)
(2) Income (Direct/Indirect)
12. Attitude of Local Community Involved
13. The Written Attitude of Horse Industry Associations
14. Experience and Credibility of Consultants, Advisors, and Professionals
a. Feasibility
b. Credibility and Integrity of Feasibility Study
15. Financial and Economic Integrity of Financial Plan
(1) Equity
a. Source
b. Amount
c. Position
d. Type
(2) Debt
a. Source
b. Amount
c. Terms
d. Repayment
(3) Equity to Debt Ratio
a. Integrity of Financing Plan
(1) Identity of Participants
(2) Role of Participants
(3) History of Participants
(4) Law Enforcement Intelligence
16. Apparent or Non-Apparent Hope of Financial Success

5. List Of Shareholders. Each organization shall, if a corporation or partnership, maintain a current list of shareholders and the number of shares held by each; and such list shall be available for inspection upon demand by the Commission or its representatives. The organization shall immediately inform the Commission of any change of corporate officers or directors, general or managing partners, or of any change in shareholders; provided, however, that if the organization is a publicly-held entity, it shall disclose the names and addresses of shareholders who own 3% of the outstanding shares of the organization. The organization shall immediately notify the Commission of all stock options, tender offers, and any anticipated stock offerings. The Commission may refuse to issue a license to, or suspend the license of, any organization which fails to disclose the real name of any shareholders.

6. Denial Of License. The Commission may deny a license to conduct a horse racing meeting when in its judgment it determines the proposed meeting is not in the public interest, or fails to serve the purposes of the Utah Horse Act, or fails to meet any requirements of Utah State law or the Commission's rules. The Commission shall refuse to issue a license to any applicant who fails to provide the Commission with evidence of its ability to meet its estimated financial obligations for the conduct of the meeting.

7. Duty Of Licensed Organization. Each organization shall observe and enforce the rules of the Commission. The license is granted on the condition that the organization, its officials, its employees and its concessionaires shall obey all decisions and orders of the Commission. The organization shall not allow any wagering within the enclosure of the racing facility which might be construed as being in violation of the Laws of the State of Utah.

8. Conditions Of A Race Meeting. The organization may impose conditions for its race meeting as it may deem necessary; provided, however, that such conditions may not conflict with any requirements of Utah State Law or the Rules, Regulations and Orders of the Commission. Such conditions shall be published in the Condition Book or otherwise made available to all licensees participating in its race meeting. A copy of the conditions and nomination race book shall be published no later than 45 days prior to the commencement of the race meeting. A proof of such conditions and nomination race book shall be filed with the Commission no later than 45 days prior to printing. The conditions and nomination race book is subject to the approval of the Commission. The organization may impose requirements, qualifications, requisites, and track rules for its race meeting as it may deem necessary; provided such requirements, qualifications, and track rules do not conflict with Utah State Law or the Rules, Regulations, and Orders of the Commission. Such information shall be published in the Condition Book, posted on the organization's bulletin boards, or otherwise made available to all licensees participating at its race meeting.

All requirements, qualifications, requisites or track rules imposed by the organization require prior review and approval by the Commission, which reserves the right of final decision in all matters pertaining to the conditions of a race meeting.

9. Right Of Commission To Information. The organization may be asked to furnish the Commission, on forms approved by the Commission, a daily itemized report of the receipts of attendance, parking, concessions, commissions, and any other requested information. The organization shall also provide a corrected official program, completed race results charts approved by the Commission, and any other information the Commission may require. Such daily reports shall be filed

with the Commission within 72 hours of the race day.

10. Duty To Compile Official Program. The organization shall compile an official program for each racing day which shall contain the names of the horses which are to run in each race together with their respective post positions, post time for first race, age, color, sex, breeding, jockey, trainer, owners or stable name, racing colors, weight carried, conditions of the race, the order in which each race shall be run, the distance to be run, the value of each race, a list of Racing Officials and track management personnel, and any other information the Commission may require. The Commission may direct the organization to publish in the program any other information and notices to the public as it deems necessary.

11. Duty To Maintain Racing Records. The organization shall maintain a complete record of all races of all authorized race meetings of the same type of racing being conducted by the organization, and such records shall be maintained and retained for a period of five years. This requirement may be met by race records of Triangle Publications, the American Quarter Horse Association, the Appaloosa Horse Club, the American Paint Horse Association, other breed registry associations' racing records department, or other racing publications approved by the Commission.

12. Horsemen's Bookkeeper. The organization shall employ a Horsemen's Bookkeeper who shall maintain records as the organization and Commission shall direct. The records shall include the name, address, social security or federal identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horseman's account. The Horsemen's Bookkeeper shall keep the riding accounts of the jockeys and shall disburse the received fees to the proper claimants. It shall be the duty of the Horsemen's Bookkeeper to receive and disburse the purses of each race and all stakes, entrance money, jockey fees, and other monies that properly come into his possession, and make disbursements within 48 hours of receipt of notification from the testing laboratory that drug tests have cleared unless an appeal or protest has been filed with the Stewards or the Commission. The Horsemen's Bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due; except upon written request, the Horsemen's Bookkeeper shall, within 30 days after the meeting, disburse all monies to the persons entitled to receive the same. The Horsemen's Bookkeeper shall maintain a file of all required statements of partnerships, syndicates, corporations; assignments of interest; lease agreements; and registrations of authorized agents. All records and monies of the Horsemen's Bookkeeper shall be kept separate and apart from any other of the organization and are subject to inspection by the Commission at any time.

13. Accounting Practices And Responsibility. The organization and its managing officers shall ensure that all purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with the Act, the Rules and Regulations of the Commission, the organization rules, and race conditions. Copies of all nomination payment race contracts, agreements, and conditions shall be submitted to the Commission and related reporting requirements fulfilled as specified by the Commission. Subject to approval of the Commission, the organization shall maintain on a current basis a bookkeeping and accounting program under the guidance of a Certified Public Accountant. The Commission may require periodic audits to determine that the organization has funds available to meet those distributions for the purposes required by the Act, the Rules and Regulations of the Commission, the conditions and nomination race program of the race meeting, and the obligations incurred in the daily operation of the race meeting. Annually, the organization shall file a copy of all tax returns, a balance sheet, and a profit and loss statement.

14. Electronic Photo Finish Device. All organizations shall install and maintain in good service an electronic photo finish device for photographing the finishes of all races and recording the time of each horse in hundredths of a second, when applicable, to assist the placing judges and the Stewards in determining the finishing positions and time of the horses. Prior to first use, the electronic photo finish device must be approved by the Commission; and a calibration report must be filed with the Commission by January 1 of each year. A photograph of each finish shall be promptly posted for public view in at least one conspicuous place in the public enclosure.

15. Videotape Recording Of Races. All organizations shall install and operate a system to provide a videotape recording of each race so that such recording clearly shows the position and action of the horses and jockeys at close enough range to be easily discernible. A video monitor shall be located in the Stewards' Tower to assist in reviewing the running of the races. Prior to first use, the videotape recording system and location and placement of its equipment must be approved by the Commission. Every race other than a race run solely on a straight course may be recorded by use of at least two cameras to provide panoramic and head-on views of the race. Races run solely on the straight course shall be recorded by the use of at least one camera to provide a head-on view. Except with prior approval of the Commission, all organizations shall maintain an auxiliary videotape recording camera and player in case of breakdown and/or malfunction of a primary videotape recording camera or player.

16. Identification Of Photo Finish Photographs And Videotape Recordings. All photo finish photographs and videotape recordings required by these Rules shall be identified by indicating thereon, the date, number of the race, and the name of the racetrack at which the race is held.

17. Altering Official Photographs Or Recordings. No person shall cut, mutilate, alter or change any photo finish photograph or videotape recording for the purpose of deceit or fraud of any type.

18. Preservation Of Official Photographs And Recordings. All organizations shall preserve all photographic negatives and videotape recordings of all races for at least 180 days after the close of their meeting. Upon request of the Commission, the organization shall furnish the Commission with a clear, positive print of any photograph of any race, or a kinescope print or copy of the videotape recording of any race.

19. Viewing Room Required. The organization shall maintain a viewing room for the purpose of screening the videotape recording of the races for viewing by Racing Officials, jockeys, trainers, owners, and other interested persons authorized by the Stewards.

20. Office Space For The Commission. The organization shall provide within the enclosure adequate office space for use by the Commission and its authorized representatives, and shall provide such necessary office furniture and utilities as may be required for the conduct of the Commission's business and the collection of the public revenues at such organization's meetings.

21. Duty To Receive Complaints. The organization shall maintain a place where written complaints or claims of violations (objections) of racetrack rules, regulations, and conditions; Commission Rules and Regulations; or Utah State Laws may be filed. A copy of any written complaint or claim filed with the organization shall be filed by the organization with the Commission or Commission representatives within 24 hours of receipt of the complaint or claim.

22. Bulletin Boards Required. The organization shall erect and maintain a glass enclosed bulletin board close to the Racing Secretary's Office in a place where access is granted to

all licensees, upon which all official notices of the Commission shall be posted. The organization shall also erect and maintain a glass enclosed bulletin board in the grandstand area where access is granted to all race day patrons, upon which all official notices of the Commission shall be posted.

23. Communication Systems Required. The organization shall install and maintain in good service a telephonic communication system between the Stewards' stand, racing office, jockey room, paddock, testing barn, starting gate, video camera locations, and other designated places. The organization shall also install and maintain in good service a public address communication system for the purpose of announcing the racing program, the running of the races, and any public service notices, as well as maintaining communications with the barn area for the purpose of paddock calls and the paging of horsemen.

24. Ambulance Service. Subject to the approval of the Commission, the organization shall provide the services of an approved medical ambulance and its properly qualified attendants at all times during the running of the race program at its meeting and, except with prior permission of the Commission, during the hours the organization permits the use of its race course for training purposes. The organization shall also provide the service of a horse ambulance during the same hours. A means of communication shall be provided by the organization between a staffed observation point (Stewards' Tower and Clocker's Stand) for the race course and the place where the required ambulances and their attendants are posted for prompt response in the event of accident to any person or horse. In the event an emergency necessitates the departure of a required ambulance, the race course shall be closed until an approved ambulance is again available within the enclosure.

25. Safety Of Race Course And Premises. The organization shall take cognizance of any complaint regarding the safety or uniformity of its race course or premises, and shall maintain in safe condition the race course and all rails and other equipment required for the conduct of its races.

26. Starting Point Markers And Distance Poles. Permanent markers must be located at each starting point to be utilized in the organization's racing program. The starting point markers and distance poles must be of a size and in a position where they can be seen clearly from the stewards' stand. The starting point markers and distance poles shall be marked with the appropriate distance and be the following colors:

TABLE

1/16 poles . . .	black and white horizontal stripes
1/8 poles . . .	green and white horizontal stripes
1/4 poles . . .	red and white horizontal stripes
220 yards . . .	green and white horizontal stripes
250 yards . . .	blue
300 yards . . .	yellow
330 yards . . .	black and white horizontal stripes
350 yards . . .	red
400 yards . . .	black
440 yards . . .	red and white horizontal stripes
550 yards . . .	black and white horizontal stripes
660 yards . . .	green and white horizontal stripes
770 yards . . .	black and white horizontal stripes
870 yards . . .	blue and white horizontal stripes

27. Grade And Distance Survey. A survey by a licensed surveyor of the race course, including all starting chutes, indicating the grade and measurement of distances to be run must be filed with the Commission prior to the first race meeting.

28. Physical Requirements For Non pari-Mutuel Racing Facility. In order for an organization to be granted a license to conduct non pari-mutuel racing, the facility shall meet the following physical requirements:

A. A regulation track shall be a straightaway course of 440 yards in length. The straightaway shall connect with an oval not less than one-half mile in circumference; except that the width may vary according to the number of horses started in a field, but a minimum of twenty feet shall be allowed for the first two horses with an additional five feet for each added starter.

B. The inner and outer rails shall extend the entire length of the straightaway and around the connecting oval; it shall be at least thirty inches and not more than forty-two inches in height. A racetrack not approved by the Commission prior to January 1, 1993, shall otherwise have inner and outer rails of at least thirty-eight inches (38") and not more than forty-two inches in height. It shall be constructed of metal not less than two inches in diameter, wood not less than two inches in thickness and six inches in width, or other construction material approved by the Commission. Whatever construction material is used must provide for the safety of both horse and rider. It must be painted white and maintained at all times.

C. Stabling facilities should be adequate for the number of horses to be on hand for the meet. In no case will a track with less than 200 stalls be acceptable, without Utah Horse Commission approval.

D. Stands for Stewards and Timers shall be located exactly on the finish line and provide a commanding and uninterrupted view of the entire racing strip.

E. The paddock shall be spacious enough to provide adequate safety. The jockey's room shall be in or adjacent to the paddock enclosure and shall be equipped with separate but equal complete sanitation facilities including showers for both male and female riders. This area must be fenced to keep out unauthorized persons and provide maximum security and safety. The fence shall be at least four feet high of chain link, v-mesh or similar construction.

F. A Test Barn with a minimum of two stalls shall be provided for purpose of collecting urine specimens. The Test Barn and a walking ring large enough to accommodate several horses cooling out at the same time shall be completely enclosed by a fence at least eight feet high of chain link, v-mesh or similar construction. There shall be only one entrance into the Test Barn enclosure which shall remain locked or guarded at all times. Provisions shall be made in this area for an office to accommodate the needs of the Official Veterinarian and from which he can observe the stalls and the entrance into the Test Barn enclosure. The organization shall provide facilities for the immediate cooling and freezing of all urine specimens, and shall make provisions for the specimens to be shipped to the laboratory packed in dry ice.

G. A grandstand or bleachers shall be provided for the spectators and shall provide for the comfort and safety of the spectators. Facilities must include rest rooms and a public water supply.

29. Organization As The Insurer Of The Race Meeting. Approval of a race meeting by the Commission does not establish said Commission as the insurer or guarantor of the safety or physical condition of the organization's facilities or purse of any race. The organization does thereby agree to indemnify, save and hold harmless the Utah Horse Commission from any liability, if any, arising from unsafe conditions of track facilities or grandstand and default in payment of purses. The organization shall provide the Commission with a certificate of adequate liability insurance.

R65-7-5. Occupation Licensing and Registration.

1. Occupation Licenses. No person required to be licensed shall participate in a race meeting without their holding a valid license authorizing that participation. Licenses shall be obtained prior to the time such persons engage in their vocations upon such racetrack grounds at any time during the calendar year for which the organization license has been issued.

A. A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required

fee and procure the appropriate license or licenses.

B. A person acting in any of the following capacities shall pay the required fee and procure the appropriate license or licenses: (A list of all required fees shall be available at the Utah Department of Agriculture and Food.)

1. Owner/Trainer Combination
2. Owner
3. Trainer
4. Assistant Trainer
5. Jockey
6. Veterinarian
7. Jockey Room Attendant
8. Paddock Attendant
9. Pony Rider
10. Concessionaire
11. Valet
12. Groom

C. A person whose license-identification badge is lost or destroyed shall procure a replacement license-identification badge and shall pay the required fee.

D. The date of payment of all required fees as recorded by the Commission shall be the effective date of issuance of a continuous occupation license or registration shall expire on December 31 of the year in which it is issued. A license renewal shall be on an annual basis beginning January 1.

E. All license applicants may be required to provide two complete sets of fingerprints on forms provided by or acceptable to the Commission and pay the required fee for processing the fingerprint cards through State and Federal Law Enforcement Agencies. If the fingerprints are of a quality not acceptable for processing, the licensee may be required to be refingerprinted.

F. All applicants for occupation licenses must be a minimum of 16 years of age. However, this shall not preclude dependent children under the age of 16 from working for their parents or guardian if said parents or guardian are licensed as a trainer or assistant trainer and permission has been obtained from the organization licensee. A trainer or his authorized representative signing a Test Barn Sample Tag must be licensed and a minimum of 18 years of age.

2. Employment Of Unlicensed Person. No organization, owner, trainer or other licensee acting as an employer within the enclosure at an authorized race meeting shall employ or harbor within the enclosure any person required to be licensed by the Commission until such organization, owner, trainer, or other employer determines that such person required to be licensed has been issued a valid license by the Commission. No organization shall permit any owner, trainer, or jockey to own, train, or ride on its premises during a recognized race meeting unless such owner, trainer, or jockey has received a license to do so from the Commission. The organization or prospective employer may demand for inspection the license of any person participating or attempting to participate at its meeting, and the organization may demand for inspection the documents relating to any horse on its grounds.

3. Notice Of Termination. Any organization, owner, trainer, or other licensee acting as an employer within the enclosure at an authorized race meeting shall be responsible for the immediate notification to the Commission and the organization conducting the race meeting of a termination of employment of a licensee. The employer shall make every effort to obtain the license badge from the employee and deliver the license badge to the Commission.

4. Application For License. An applicant for license shall apply in writing on the application forms furnished by the Commission.

5. License Identification Badge Requirements. The license identification badge may consist of the following information concerning the licensee:

A. Full Name
B. Permanent Address
C. License Capacity
D. Date of Issue
E. Passport-Type Color Photograph
F. Social Security Number
G. Date of Birth

All license identification badges may be color coded as to capacity of occupation and eligibility for access to restricted areas. All license holders, except jockeys riding in a race, must wear a current identification badge while present in restricted areas of the enclosure or as otherwise specified in Subsection R65-7-5(1).

6. Honoring Official Credentials. Credentials issued by the Commission may be honored for admission at all gates and entrances and to all places within the enclosure. Automobiles with vehicle decals issued by the Commission to its members and employees shall be permitted ingress and egress at any point. Credentials issued by the National Association of State Racing Commissioners to its members, past members, and staff shall be honored by the organization for admission into the public enclosure when presented therefore by such persons.

7. License Subject To Conditions And Agreements.

A. Every license is subject to the conditions and agreements contained in the application therefore and to the Statutes and Rules.

B. Every license issued to a licensee by the Commission remains the property of the Commission.

C. Possession of a license does not, as such, confer any right upon the holder thereof to employment at or participation in a race.

D. The Commission may restrict, limit, place conditions on, or endorse for additional occupational classes, any license, R65-7-5(9).

8. Changes In Application Information. Each licensee or applicant for license shall file with the Commission his permanent and his current mailing address and shall report in writing to the Commission any and all changes in application information.

9. Grounds For Denial, Refusal, Suspension Or Revocation Of License. The Commission, in addition to any other valid ground or reason, may deny, refuse to issue, suspend or revoke an occupation license for any person:

A. Who has been convicted of a felony of this State, any other state, or the United States of America; or

B. Who has been convicted of violating any law regarding gambling or controlled dangerous substance of this State, any other state, or of the United States of America; or

C. Who is unqualified to perform the duties required of the applicant; or

D. Who fails to disclose or states falsely any information required in the application; or

E. Who has been found guilty of a violation of any provision of the Utah Horse Act or of the Rules and Regulations of the Commission; or

F. Whose license for any racing occupation or activity requiring a license has been or is currently suspended, revoked, refused or denied for just cause in any other competent racing jurisdiction; or

G. Who has been or is currently excluded from any racing enclosure by a competent racing jurisdiction.

10. Examinations. The Commission may require the applicant for any license to demonstrate his knowledge, qualifications, and proficiency for the license applied for by such examination as the Commission may direct.

11. Refusal Without Prejudice. A refusal to issue a license (as distinguished from a denial of a license) to an applicant by the Commission at any race meeting is without prejudice; and the applicant so refused may reapply for a license at any subsequent or other race meeting, or he may appeal such refusal

to the Commission for hearing upon his qualifications and fitness for the license.

12. Hearing After Denial Of License. Any person who has had his license denied may petition the Commission to reopen the case and reconsider its decision upon a sufficient showing that there is now available evidence which could not, with the exercise of reasonable diligence, have been previously presented to the Commission. Any such petition must be filed with the Commission no later than 30 days after the effective date of the Commission's decision in the matter. Any person who has been denied a license by the Commission may not refile a similar application for license until one year from the effective date of the decision to deny the license.

13. Financial Responsibility Of Applicants. Applicants for license as horse owner or trainer must submit satisfactory evidence of their financial ability to care for and maintain the horses owned and/or trained by them when such evidence is requested by the Commission.

14. Physical Examination. The Commission or the Stewards may require that any jockey be examined at any time, and the Commission or the Stewards may refuse to allow any jockey to ride until he has successfully passed such examination.

15. Qualifications For Jockey. No person under 16 years of age shall be granted a jockey's license. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey unless he has satisfactorily worked a horse from the starting gate in company, before the Stewards or their representatives. Upon the recommendation of the Stewards, the Commission may issue a jockey's license granting permission to such person for the purpose of riding in not more than four races to establish the qualifications and ability of such person for the license. Subsequently, the Stewards may recommend the granting of a jockey's license.

16. Jockey Agent. A jockey agent is the authorized representative of a jockey if he is registered with the Stewards and licensed by the Commission as the Jockey's representative. No jockey agent shall represent more than two jockeys at the same time.

17. Workers' Compensation Act Compliance. No person may be licensed as a trainer, owner, or in any other capacity in which such person acts as the employer of any other licensee at any authorized race meeting, unless his liability for Workers' Compensation has been secured in accordance with the Workers' Compensation Act of the State of Utah and until evidence of such security for liability is provided the Commission. Should any such required security for liability for Workers' Compensation be canceled or terminated, any license held by such person shall be automatically suspended and shall be grounds for revocation of the license. If a license applicant certifies that he has no employees that would subject him to liability for Workers' Compensation, he may be licensed, but only for the period he has no employees.

18. Program Trainer Prohibited. No licensed trainer, for the purpose of avoiding his responsibilities or insurance requirements as set forth in these Rules, shall place any horse in the care or attendance of any other trainer.

19. Qualifications For License As Horse Owner. No person may be licensed as a horse owner who is not the owner of record of a properly registered race horse which he intends to race in Utah and which is in the care of a licensed trainer, or who does not have an interest in such race horse as a part owner or lessee, or who is not the responsible managing owner of a corporation, syndicate or partnership which is the legal owner of such horse.

20. Horse Ownership By Lease. Horses may be raced under lease provided a completed Utah Horse Commission, breed registry, approved pari-mutuel or other lease form acceptable to the Commission, is attached to the Registration Certificate and on file with the Commission. The lessor(s) and lessee must be licensed as horse owners. No lessor shall execute a lease for the purpose of avoiding insurance requirements.

21. Statements Of Corporation, Partnership, Syndicate Or Other Association Or Entity. All organizational documents of a corporation, partnership, syndicate or other association or entity, and the relative proportion of ownership interest, the terms of sales with contingencies, arrangements, or leases, shall be filed with the Horsemen's Bookkeeper of the organization and with the Commission. The above-said documents shall declare to whom winnings are payable, in whose names the horses shall be run, and the name of the licensed person who assumes all responsibilities as the owner. The part owner of any horse shall not assign his share or any part of it without the written consent of the other partners, and such consent shall be filed with the Horsemen's Bookkeeper and the Commission. A person or persons conducting racing operations as a corporation, partnership, syndicate or other association or entity shall register the information required by Rules in this Article and pay the required fee(s) for the appropriate entity.

22. Stable Name Registration. A person or persons electing to conduct racing operations by use of a stable name shall register the stable name and shall pay the required fee.

A. The applicant must disclose the identity or identities of all persons comprising the stable name.

B. Changes in identities must be reported immediately to and approval obtained from the Commission.

C. No person shall register more than one stable name at the same time nor use his real name for racing purposes so long as he has a registered stable name.

D. Any person who has registered under a stable name may cancel the stable name after he has given written notice to the Commission.

E. A stable name may be changed by registering a new stable name and by paying the required Fee.

F. No person shall register a stable name which has been registered by any other person with any organization conducting a recognized race meeting.

G. A stable name shall be clearly distinguishable from that of another registered stable name.

H. The stable name, and the name of the owner or managing owner, shall be published in the official program. If the stable name consists of more than one person, the official program will list the name of the managing owner along with the phrase "et al."

I. If a partnership, corporation, syndicate, or other association or entity is involved in the identity comprising a stable name, the rules covering a partnership, corporation, syndicate or other association or entity must be complied with and the usual fees paid therefore in addition to the fees for the registration of a stable name.

23. Ownership Licensing Required. The ownership licensing procedures required by the Commission must be completed prior to the horse starting in a race and shall include all registrations, statements and payment of fees.

24. Knowledge Of Rules. Every licensee, in order to maintain their qualifications for any license held by them, shall be familiar with and knowledgeable of the rules, including all amendments. Every licensee is presumed to know the rules.

25. Certain Prohibited Licenses. Commission-licensed jockeys, veterinarians, organizations' security personnel, vendors, and such other licensees designated by the stewards with approval of the Commission, shall not hold any other license. The Commission may refuse to issue a license to a person whose spouse holds a license and which, in the opinion of the Commission, would create a conflict of interest.

R65-7-6. Racing Officials and Commission Racing

Personnel.

1. Racing Officials. The racing officials of a race meeting, unless otherwise ordered by the Commission, are as follows: the stewards, the associate judges, the placing judges, the paddock judge, the patrol judges, the starter, the identifier/tattooer, and the racing secretary. No racing official may serve in that capacity during any race meeting at which is entered a horse owned by them or by a member of their family or in which they have any financial interest. Being the lessee or lessor of a horse shall be construed as having a financial interest.

2. Responsibility To The Commission. The racing officials shall be strictly responsible to the Commission for the performance of their respective duties, and they shall promptly report to the Commission or its stewards any violation of the rules of the Commission coming to their attention or of which they have knowledge. Any racing official who fails to exercise due diligence in the performance of his duties shall be relieved of his duties by the stewards and the matter referred to the Commission.

3. Racing Officials Subject To Approval. Every racing official is subject to prior approval by the Commission before being eligible to act as a racing official at the meeting. At the time of making application for an organization license, the organization shall nominate the racing officials other than the racing officials appointed by the Commission; and after issuance of license to the organization, there shall be no substitution of any racing official except with approval of the stewards or the Commission.

4. Racing Officials Appointed By The Commission. The Commission shall appoint the following racing officials for a race meeting: The board of three stewards and the identifier/tattooer. The Commission may appoint from the approved stewards list one steward to serve as state steward.

5. Racing Personnel Employed By The Commission. The Commission shall employ the services of the licensing person for a race meeting.

6. General Authority Of Stewards. The stewards have general authority and supervision over all licensees and other persons attendant on horses, and also over the enclosures of any recognized meeting. Stewards have the power to interpret the Rules and to decide all questions not specifically covered by them. The stewards shall have the power to determine all questions arising with reference to entries, eligibility and racing; and all entries, declarations and scratches shall be under the supervision of the stewards. The stewards shall be strictly responsible to the Commission for the conduct of the race meeting in every particular.

7. Vacancy Among Racing Officials. Where a vacancy occurs among the racing officials, the stewards shall fill the vacancy immediately. Such appointment is effective until the vacancy is filled in accordance with the rules.

8. Jurisdiction Of Stewards To Suspend Or Fine. The stewards' jurisdiction in any matter commences 72 hours before entries are taken for the first day of racing at the meeting and extends until 30 days after the close of such meeting. In the event a dispute or controversy arises during a race meeting which is not settled within the stewards' thirty-day jurisdiction, then the authority of the stewards may be extended by authority of the Commission for the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission. The stewards may suspend for not more than one year per violation the license of anyone whom they have the authority to supervise; or they may impose a fine not to exceed $2,500 per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude. All such suspensions, fines, or exclusions shall be reported immediately to the Commission. The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the rules promulgated by the Commission or the provisions of the Utah Horse Act under the following circumstances:

A. A horse is a confirmed bleeder as determined by the official veterinarian, and the official veterinarian recommends to the stewards that the horse be suspended from participation.

B. A horse is involved with:

i. Any violation of medication laws and rules;

ii. Any suspension or revocation of an occupation license by the stewards or the Commission or any racing jurisdiction recognized by the Commission; or

iii. Any violation of prohibited devices, laws, and rules.

9. Referral To The Commission. The stewards may refer with or without recommendation any matter within their jurisdiction to the Commission.

10. Payment Of Fines. All fines imposed by the stewards or Commission shall be due and payable to the Commission within 72 hours after imposition, except when the imposition of such fine is ordered stayed by the stewards, the Commission, or a court having jurisdiction. However, when a fine and suspension is imposed by the stewards or Commission, the fine shall be due and payable at the time the suspension expires. Nonpayment of the fine when due and payable may result in immediate suspension pending payment of the fine.

11. Stewards' Reports And Records. The stewards shall maintain a record which shall contain a detailed, written account of all questions, disputes, protests, complaints, and objections brought to the attention of the stewards. The stewards shall prepare a daily report concerning their race day activities which shall include fouls and disqualifications, disciplinary hearings, fines and suspensions, conduct of races, interruptions and delays, and condition of racing facility. The stewards shall submit the signed original of their report and record to the Executive Director of the Commission within 72 hours of the race day.

12. Power To Order Examination Of Horse. The stewards shall have the power to have tested, or cause to be examined by a qualified person, any horse entered in a race, which has run in a race, or which is stabled within the enclosure; and may order the examination of any ownership papers, certificates, documents of eligibility, contracts or leases pertaining to any horse.

13. Calling Off Race. When, in the opinion of the stewards, a race(s) cannot be conducted in accordance with the rules of the Commission, they shall cancel and call off such race(s). In the event of mechanical failure or interference during the running of a race which affects the horses in such race, the Stewards may declare the race a "no contest." A race shall be declared "no contest" if no horse covers the course.

14. Substitution Of Jockey Or Trainer.

A. In the event a jockey who is named to ride a mount in a race is unable to fulfill his engagement and is excused by the stewards, the trainer of the horse may select a substitute jockey; or, if no substitute jockey is available, the stewards may scratch the horse from the race. However, the responsibility to provide a jockey for an entered horse remains with the trainer; and the scratching of said horse by the stewards shall not be grounds for the refund of any nomination, sustaining, penalty payments, or entry fees.

B. In the absence of the trainer of the horse, the stewards may place the horse in the temporary care of another trainer of their selection; however, such horse may not be entered or compete in a race without the approval of the owner and the substitute trainer. The substitute trainer must sign the entry card.

15. Stewards' List. The stewards may maintain a stewards' list of those horses which, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance due to the inability to maintain a straight course, or any other

reason considered a hazard to the safety of the participants. Such horse shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely and can be removed from the stewards' list.

16. Duties Of The Starter. The starter shall have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start. The starter shall appoint his assistants; however, he shall not permit his assistants to handle or take charge of any horse in the starting gate without his expressed permission. In the event that organization starter assistants are unavailable to head a horse, the responsibility to provide qualified individuals to head and/or tail a horse in the starting gate shall rest with the trainer. The starter may establish qualification for and maintain a list of such qualified individuals approved by the stewards. No assistant starter or any individual handling a horse at the starting gate shall in any way impede, whether intentionally or otherwise, the start of the race; nor may an assistant starter or other individual, except the jockey handling the horse at the starting gate, apply a whip or other device in an attempt to load any horse in the starting gate. No one other than the jockey shall slap, boot, or otherwise attempt to dispatch a horse from the starting gate.

17. Starter's List. The starter may maintain a starter's list of all horses which, in his opinion, are ineligible to be entered in any race because of poor or inconsistent performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter or his representatives that it has been satisfactorily schooled in the gates and can be removed from the starter's list. Such schooling shall be under the direct supervision of the starter or his representatives.

18. Duties Of The Paddock Judge. The paddock judge shall supervise the assembling of the horses scheduled to race, the saddling of horses in the paddock, the saddling equipment and changes thereof, the mounting of the jockeys, and their departure for the post. The paddock judge shall provide a report on saddling equipment to the Stewards at their request.

19. Duties Of Patrol Judges. The patrol judges, when utilized, shall be subject to the orders of the stewards and shall report to the stewards all facts occurring under their observation during the running of a race.

20. Duties Of Placing Judges And Timers. The placing judges, timers, and/or stewards shall occupy the judges' stand at the time the horses pass the finish line; and their duties shall be to hand time, place the horses in the correct order of finish, and report the results. In case of a dead heat or a disagreement as to the correct order of finish, the decision of the stewards shall be final. In placing the horses at the finish, the position of the horses' noses only shall be considered the most forward point of progress.

21. Duties Of The Clerk Of Scales. The clerk of scales is responsible for the presence of all jockeys in the jockey's room at the appointed time and to verify that all jockeys have a current Utah jockey's license. The clerk of scales shall verify the correct weight of each jockey at the time of weighing out and when weighing in, and shall report any discrepancies to the stewards immediately. In addition, he or she shall be responsible for the security of the jockey's room and the conduct of the jockeys and their attendants. He or she shall promptly report to the stewards any infraction of the Rules with respect to weight, weighing, riding equipment, or conduct. He or she shall be responsible for accounting of all data required on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day.

22. Duties Of The Racing Secretary. The racing secretary shall write and publish conditions of all races and distribute them to horsemen as far in advance of the closing of entries as possible. He or she shall be responsible for the safekeeping of registration certificates and the return of same to the trainers on request or at the conclusion of the race meeting. He or she shall record winning races on the form supplied by the breed registry, which shall remain attached to or part of the registration certificate. The racing secretary shall be responsible for the taking of entries, checking eligibility, closing of entries, selecting the races to be drawn, conducting the draw, posting the overnight sheet, compiling the official program, and discharging such other duties of their office as required by the rules or as directed by the Stewards.

23. Duties Of Associate Judge. An associate judge may perform any of the duties which are performed by any racing official at a meeting, provided such duties are assigned or delegated to them by the Commission or by the stewards presiding at that meeting.

24. Duties Of The Official Veterinarian. The official veterinarian must be a graduate veterinarian and licensed to practice in the State of Utah. He or she shall recommend to the stewards any horse that is deemed unsafe to be raced, or a horse that it would be inhumane to allow to race. He or she shall supervise the taking of all specimens for testing according to procedures approved by the Commission. He or she shall provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination. All specimens collected shall be sent in locked and sealed cases to the laboratory. He or she shall have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure. The official veterinarian shall report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting, and the reasons therefore. The official veterinarian may place horses on a veterinarian's list, and may remove from the list those horses which, in their opinion, can satisfactorily compete in a race.

25. Veterinarian's List. The official veterinarian may maintain a list of all horses who, in their opinion, are incapable of safely performing in a race and are, therefore, ineligible to be entered or started in a race. Such horse may be removed from the Veterinarian's List when, in the opinion of the official veterinarian, the horse has satisfactorily recovered the capability of performing in a race. The reasons for placing a horse on the veterinarian's list shall include the shedding of blood from one or both nostrils following exercise or the performance in a race and the running of a temperature unnatural to the horse.

26. Duties Of The Identifier. The identifier shall identify all horses starting in a race. The identifier shall inspect documents of ownership, eligibility, registration, or breeding as may be necessary to ensure proper identification of each horse eligible to compete at a race meeting provide assistance to the stewards in that regard. The identifier shall immediately report to the paddock judge and the stewards any horse which is not properly identified or any irregularities reflected in the official identification records. The identifier shall report to the stewards and to the Commission on general racing practices observed, and perform such other duties as the Commission may require. The identifier shall report to the racing secretary before the close of the race day business.

R65-7-7. Entries and Declarations.

1. Control Over Entries And Declarations. All entries and declarations are under the supervision of the Stewards or their designee; and they, without notice, may refuse the entries any person or the transfer of entries.

2. Racing Secretary To Establish Conditions. The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and such other conditions as are necessary to provide and conduct the organization's race meeting. The racing secretary is responsible for the receipt of entries and declarations for all

races. The racing secretary, employees of their department, or racing officials shall not disclose any pertinent information concerning entries which have been submitted until all entries are closed. After an entry to a race for which conditions have been published has been accepted by the racing secretary or their delegate, no condition of such race shall be changed, amended or altered, nor shall any new condition for such race be imposed.

3. Entries. No horse shall be entered in more than one race on the same day. No person shall enter or attempt to enter a horse for a race unless such entry is a bona fide entry made with the intention that such horse is to compete in the race for which entry is made except, if racing conditions permit, for entry back in finals or consolations involving physically disabled or dead qualifiers for purse payment purposes. Entries shall be in writing on the entry card provided by the organization and must be signed by the trainer or assistant trainer of the horse. Entries made by telephone are valid properly confirmed by the track when signing the entry card. No horse shall be allowed to start unless the entry card has been signed by the trainer or his assistant trainer.

4. Determining Eligibility. Determination of a horse's eligibility, penalty or penalties and the right to allowance or allowances for all races shall be from the date of the horse's last race unless the conditions specify otherwise. The trainer is responsible for the eligibility of his horse and to properly enter his horse in condition. In the event the records of the Racing Secretary or the appropriate breed registry do not reflect the horse's most recent starts, the trainer or owner shall accurately provide such information. If a horse is not eligible under the first condition of any race, he cannot be eligible under subsequent conditions. If the conditions specify nonwinners of a certain amount, it means that the horse has not won a race in which the winner's share was the specified amount or more. If the conditions specify nonearners of a stated amount, it means that the horse has not earned that stated amount in any total number of races regardless of the horse's placing.

5. Entries Survive With Transfer. All entries and rights of entry are valid and survive when a horse is sold with his engagements duly transferred. If a partnership agreement is properly filed with the Horsemen's Bookkeeper, subscriptions, entries and rights of entry survive in the remaining partners. Unless written notice to the contrary is filed with the stewards, the entries, rights of entry, and engagements remain with the horse and are transferred therewith to the new owner. No entry or right of entry shall become void on the death of the nominator unless the conditions of the race state otherwise.

6. Horses Ineligible To Start In A Race. In addition to any other valid ground or reason, a horse is ineligible to start any race if:

A. Such horse is not registered by The Jockey Club if a Thoroughbred; the American Quarter Horse Association if a Quarter Horse; the Appaloosa Horse Club if an Appaloosa; the Arabian Horse Club Registry of America if an Arabian; the American Paint Horse Association if a Paint; the Pinto Horse Association of America, Inc., if a Pinto; or any successors to any of the foregoing or other registry recognized by the Commission.

B. The Certificate of Foal Registration, eligibility papers, or other registration issued by the official registry for such horse is not on file with the racing secretary one hour prior to post time for the race in which the horse is scheduled to race.

C. Such horse has been entered or raced at any recognized race meeting under any name or designation other than the name or designation duly assigned by and registered with the official registry.

D. The Win Certificate, Certificate of Foal Registration, eligibility papers or other registration issued by the official registry has been materially altered, erased, removed, or forged.

E. Such horse is ineligible to enter said race, is not duly entered for such race, or remains ineligible to time of starting.

F. The trainer of such horse has not completed the prescribed licensing procedures required by the Commission before entry and the ownership of such horse has not completed the prescribed licensing procedures prior to the horse starting or the horse is in the care of an unlicensed trainer.

G. Such horse is owned in whole or in part or trained by any person who is suspended or ineligible for a license or ineligible to participate under the rules of any Turf Governing Authority or Stud Book Registry.

H. Such horse is a suspended horse.

I. Such horse is on the stewards' list, starter's list, or the veterinarian's list.

J. Except with permission of the stewards and identifier, the identification markings of the horse do not agree with identification as set forth on the registration certificate to the extent that a correction is required from the appropriate breed registry.

K. Except with the permission of the stewards, a horse has not been lip tattooed by a Commission approved tattooer.

L. The entry of a horse is not in the name of his true owner.

M. The horse has drawn into the field or has started in a race on the same day.

N. Its age as determined by an examination of its teeth by the official veterinarian does not correspond to the age shown on its registration certificate, such determination by tooth examination to be made in accordance with the current "Official Guide for Determining the Age of the Horse" as adopted by the American Association of Equine Practitioners.

7. Horses Ineligible To Enter Or Start. Any horse ineligible to be entered for a race or ineligible to start in any race which is entered or competes in such race, may be scratched or disqualified; and the stewards may discipline any person responsible.

8. Registration Certificate To Reflect Correct Ownership. Every certificate of registration, eligibility certificate or lease agreement filed with the organization and its racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of such horse, and the name of the owner which is printed on the official program for such horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate. A stable name may be registered for such owner or ownership with the Commission. In the event ownership is by syndicate, corporation, partnership or other association or entity, the name of the owner which is printed on the official program for such shall be the responsible managing owner, officer, or partner who assumes all responsibilities as the owner.

9. Alteration Or Forgery Of Certificate Of Registration. No person shall alter or forge any win sheet, certificate of registration, certificate of eligibility, or any other document of ownership or registration, no willfully forge or alter the signature of any person required on any such document or entry card.

10. Declarations And Scratches. Any trainer or assistant trainer of a horse which has been entered in a race who does not wish such horse to participate in the draw must declare his horse from the race prior to the close of entries. Any trainer or assistant trainer of a horse which has been drawn into or is also eligible for a race who does not wish such horse to start in the race, must scratch his horse from the race prior to the designated scratch time. The declaration or scratch of a horse from a race is irrevocable.

11. Deadline For Arrival Of Entered Horses. All horses scheduled to compete in a race must be present within the enclosure no later than 30 minutes prior to their scheduled race without stewards' approval. Horses not within the enclosure by

their deadline may be scratched and the trainer subject to fine and/or suspension.

12. Refund Of Fees. If a horse is declared or scratched from a race, the owner of such horse shall not be entitled to a refund of any nomination, sustaining and penalty payments, entry fees, or organization charges paid or remaining due at the time of the declaration or scratch. In the event any race is not run, declared off, or canceled for any reason, the owners of such horses that remain eligible at the time the race is declared off or canceled shall be entitled to a complete refund of all the above payments and fees less monies specified in written race conditions for advertising and promotion.

13. Release Of Certificates. Any certificate of registration or document of ownership filed with the racing secretary to establish eligibility to enter a race shall be released only to the trainer of record of the horse. However, the trainer may authorize in a form provided by the racing secretary the release of the certificate to the owner named on the certificate or his authorized agent. Any disputes concerning the rights to the registration certificates shall be decided by the stewards.

14. Nomination Races. Prior to the closing of nominations, the organization shall file with the Commission a copy of the nomination blank and all advertisements for races to be run during a race meeting. For all races which nominations close no earlier than 72 hours before post time, the organization shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of all horses nominated and which remain eligible. The list shall be distributed within 15 days after the due date of each payment and shall include the horse's name, the owner's name and the total amount of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and deduction for advertising and administrative expenses. The organization shall deposit all monies for a nomination race in an escrow account according to procedures approved by the Commission.

15. Limitations On Field And Number Of Races. No race with less than five horses entered, or three horses ultimately participating, shall be run, with the exception of a trial or the finals for a nomination race. No more than 20 races may be run on a race day, except with permission of the Commission. A race day may be canceled if less than 75 horses have been entered on the day's program, with the exception of days on which trials or finals for a nomination race are scheduled.

16. Agreement Upon Entry. No entry shall be accepted in any race except upon the condition that all disputes, claims, and objections arising out of the racing or with respect to the interpretation of Commission and track rules or conditions of any race shall be decided by the Board of Stewards at the race meet; or, upon appeal, decided by the Commission.

17. Selection Of Entered Horses. The manner of selecting post positions of horses shall be determined by the stewards. The selection shall be by lot and shall be made by one of the stewards or their designee and a horseman, in public, at the close of entries. If the number of entries to any race is in excess of the number of horses which may, because of track limitations, be permitted to start in any one race, the race may be split; or four horses not drawing into the field may be placed on an also eligible list.

18. Preferred List Of Horses. The racing secretary may maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and all rules governing such list shall be the responsibility of the Racing Secretary. Such rules must be submitted to the Commission 30 days prior to the commencement of the meet and are subject to approval by the Commission.

R65-7-8. Veterinarian Practices, Medication and Testing Procedures.

1. Veterinary Practices - Treatment Restricted. Within the time period of 24 hours prior to the post time for the first race of the week until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

2. Veterinarians Under Supervision Of Official Veterinarian. Veterinarians licensed by the Commission and practicing at an authorized meeting are under the supervision of the Official Veterinarian and the Stewards. The Official Veterinarian shall recommend to the Stewards or the Commission the discipline to be imposed upon a veterinarian who violates the Rules, and he or she may sit with the Stewards in any hearing before the Stewards concerning such discipline or violation.

3. Veterinarian Report. Every veterinarian who treats any horse within the enclosure for any contagious or communicable disease shall immediately report to the official veterinarian in writing on a form approved by the Commission. The form shall include the name and location of the horse treated, the name of the trainer, the time of treatment, the probable diagnosis, and the medication administered. Each practicing veterinarian shall be responsible for maintaining treatment records on all horses to which they administer treatment during a given race meeting. These records shall be available to the Commission upon subpoena when required. Any such record and any report of treatment as described above is confidential; and its content shall not be disclosed except in a proceeding before the stewards or the Commission, or in the exercise of the Commission's jurisdiction.

4. Drugs Or Medication. Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analog, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race shall result in disqualification by the Stewards. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

5. Racing Soundness Examination. Each horse entered to race may be subject to a veterinary examination by the official veterinarian or his authorized representative for racing soundness and health on race day.

6. Positive Lab Reports. A finding by a licensed laboratory that a test sample taken from a horse contains a drug or its metabolites or analog, or any substance foreign to the natural horse shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, saliva, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all procedures of same collection and preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which he was entered, with the burden on the trainer, assistant trainer or other responsible party to prove otherwise at any hearing in regard to the matter conducted by the stewards or the Commission.

7. Intent Of Medication Rules. It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medication, and substances foreign to the natural horse.

8. Power To Have Tested. As a safeguard against the use of drugs, medication, and substances foreign to the natural horse, a urine or other acceptable sample shall be taken under the direction of the official veterinarian from the winner of every race and from such other horses as the stewards or the Commission may designate.

9. Pre-Race Testing. The stewards may require any horse entered to race to submit to a blood or other pre-race test, and no horse is eligible to start in a race until the owner or trainer complies with the required testing procedure.

10. Equipment For Official Testing. Organizations shall provide the equipment, necessary supplies and services prescribed by the Commission and the official veterinarian for the taking of or administration of blood, urine, saliva or other tests.

11. Taking Of Samples. Blood, urine, saliva or other samples shall be taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for taking samples. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of 30 minutes after entry into the test barn before a sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them. Samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the official veterinarian, his/her assistants or other persons approved by the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. No person shall tamper with, adulterate, add to, break the seal of, remove or otherwise attempt to so alter or violate any sample required to be taken by this Article, except for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample or in the process of analysis.

The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered in violation of these Rules to the horse earning such purse money.

12. Laboratories Approved By The Commission. Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of Stewards shall receive reports directly from the laboratory.

13. Split Samples. As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of his horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R65-7-8-4 and 65-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

14. Facilitating The Taking Of Urine Samples. When a horse has been in the test barn more than 1-1/2 hours, a diuretic may be administered by the Official Veterinarian for the purpose of facilitating the collection of a urine sample with permission of the stewards and the trainer or the trainer's authorized test barn representative. The cost of administration of the diuretic is the responsibility of the trainer. Prior to the administration of a diuretic, a blood sample may be taken from the horse.

15. Postmortem Examination. Every horse which dies or suffers a breakdown on the racetrack in training or in competition within any enclosure licensed by the Commission and is destroyed, may undergo, at a time and place acceptable to the official veterinarian, a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death. Any other horse which expires within any enclosure may be required by the official veterinarian to undergo a postmortem examination.

A. The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or his trainer in consultation with the official veterinarian, who may be present at such postmortem examination.

B. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be procured prior to euthanasia.

C. The owner of the deceased horse shall make payment of any charges due the veterinarian employed by him to conduct the postmortem examination.

D. A record of such postmortem shall be filed with the official veterinarian by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

E. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupation license issued by the Commission.

R65-7-9. Running the Race.

1. Jockeys To Report. Every jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race and shall weigh out at the appointed time unless excused by the stewards. After reporting, a jockey shall not leave the jockey room until all of their riding engagements have been fulfilled and/or unless excused by the stewards.

2. Entrance To Jockey Room Prohibited. Except with permission of the stewards or the Commission, no person shall be permitted entrance into the jockey room from one hour before post time for the first race until after the last race other than jockeys, their attendants, racing officials and security officers on duty, and organization employees performing required duties.

3. Weighing Out. All jockeys taking part in a race must be weighed out by the Clerk of Scales no more than one hour preceding the time designated for the race. Any overweight in excess of one pound shall be declared by the jockey to the Clerk of Scales, who shall report such overweight and any change in jockeys to the Stewards for immediate public announcement. A jockey's weight includes the riding costume, racing saddle and pad; but shall not include the jockey's safety helmet, whip, the horse's bridle or other regularly approved racing tack. A jockey must be neat in appearance and must wear a

conventional riding costume.

4. Unruly Horses In The Paddock. If a horse is so unruly in the saddling paddock that the identifier cannot read the tattoo number and properly identify the horse; or if the trainer or their assistant is uncooperative in the effort to identify the horse, then the horse may be scratched by order of the stewards.

5. Use Of Equipment. No bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound or be more than 31 inches in length. No whip shall be used unless it shall have affixed to the end thereof a leather "popper." All whips are subject to inspection and approval by the stewards. Blinkers are not to be placed on the horse until after the horse has been identified by the official identifier, except with permission of the stewards.

6. Prohibited Use Of Equipment. Jockeys are prohibited from whipping a horse excessively, brutally, or upon the head, except when necessary to control the horse. No mechanical or electrical devices or appliances other then the ordinary whip shall be possessed by any individual or used on any horse at any time a race meeting, whether in a race or otherwise.

7. Responsibility For Weight. The jockey, trainer and owner shall be responsible for the weight carried by the horse after the jockey has been weighed out for the race by the clerk of scales. The trainer or owner may substitute a jockey when the engaged jockey reports an overweight in excess of two pounds.

8. Safety Equipment Required. All persons, when mounted on a race horse within the enclosure or riding in a race, shall wear a properly fastened safety helmet and flak jacket. The Commission or the stewards may require any other person to wear such helmet and jacket when mounted on a horse within the enclosure. All safety helmets and flak jackets so required are subject to approval of the stewards or Commission.

9. Display Of Colors And Post Position Numbers. In a race, each horse shall carry a conspicuous saddle cloth number and a head number, and the jockey shall wear colors and a numbered helmet cover corresponding to the number of the horse which are furnished by the organization licensee.

10. Deposit Of Jockey Fee. The minimum jockey mount fee for a losing mount in the race must be on deposit with the horsemen's bookkeeper, prior to the time for weighing out, and failure to have such minimum fee on deposit is cause for disciplinary action and cause for the stewards to scratch the horse for which such fee is to be deposited. The organization assumes the obligation to pay the jockey fee when earned by the engaged jockey. The jockey fee shall be considered earned when the jockey is weighed out by the clerk of scales, unless, in the opinion of the stewards, such jockey capable of riding elect to take themselves off the mount without proper cause.

11. Requirements For Horse, Trainer, And Jockey. Every horse must be in the paddock at the time appointed by the stewards before post time for their race. Every horse must be saddled in the paddock stall designated by the paddock judge unless special permission is granted by the stewards to saddle elsewhere. Each trainer or their assistant trainer having the care and custody of such horse shall be present in the paddock to supervise the saddling of the horse and shall give such instructions as may be necessary to assure the best performance of the horse. Every jockey participating in a race shall give their best effort in order to facilitate the best performance of their horse.

12. Failure To Fulfill Jockey Engagements. No jockey engaged for a certain race or for a specified time may fail or refuse to abide by his or her agreement unless excused by the stewards.

13. Control And Parade Of Horses On The Track. The horses are under the control of the starter from the time they enter the track until dispatched at the start of the race. All horses with jockey mounted shall parade and warm up carrying their weight and wearing their equipment from the paddock to the starting gate, as well as to the finish line. Any horse failing to do so may be scratched by the stewards. After passing the stands at least once, the horses may break formation and warm up until directed to proceed to the starting gate. In the event a jockey is injured during the parade to post or at the starting gate and must be replaced, the horse shall be returned to the paddock and resaddled with the replacement jockey's equipment. Such horse must carry the replacement jockey to the starting gate.

14. Start Of The Race. When the horses have reached the starting gate, they shall be placed in their starting gate stalls in the order stipulated by the starter. Except in cases of emergency, every horse shall be started by the starter from a starting gate approved by the Commission. The starter shall see that the horses are placed in their proper positions without unnecessary delay. Causes for any delay in the start shall immediately be reported to the stewards. If, when the starter dispatches the field, the doors at the front of the starting gate stall should not open properly due to a mechanical failure of malfunction of the starting gate, the stewards may declare such horse to be a nonstarter. Should a horse which is not previously scratched not be in the starting gate stall thereby causing such horse to be left when the field is dispatched by the starter, such horse shall be declared a nonstarter by the stewards.

15. Leaving The Race Course. Should a horse leave the course while moving from the paddock to starting gate, he shall return to the course at the nearest practical point to that at which he left the course, and shall complete his parade to the starting gate from the point at which he left the course. However, should such horse leave the course to the extent that he is out of the direct line of sight of the stewards, or if such horse cannot be returned to the course within a reasonable amount of time, the stewards shall scratch the horse. Any horse which leaves the course or loses its jockey during the running of a race shall be disqualified and may be placed last, or the horse may be unplaced.

16. Riding Rules. In a straightaway race, every horse must maintain position as nearly as possible in the lane in which he starts. If a horse is ridden, drifts, or swerves out of their lane in such a manner that he interferes with or impedes another horse, it is a foul. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged; and if in the opinion of the stewards a foul is committed as a result of a jockey not making his best effort to control and guide their mount to avoid a foul, whether intentionally or through carelessness or incompetence, such jockey may be penalized at the discretion of the stewards.

17. Stewards To Determine Fouls And Extent Of Disqualification. The stewards shall determine the extent of interference in cases of fouls or riding infractions. They may disqualify the offending horse and place it behind such other horses as in their judgment it interfered with, or they may place it last. The stewards may determine that a horse shall be unplaced.

18. Careless Riding. A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with or impede any other horse in the race. A jockey shall not willfully strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified and/or the jockey may be fined and/or suspended, or otherwise disciplined.

19. Ramifications Of A Disqualification. When a horse is disqualified by the stewards, every horse in the race owned wholly or in part by the same owner, or trained by the same trainer, may be disqualified. When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus 0.01 of a second penalty, or more

exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

20. Dead Heat. When a race results in a dead heat, the heat shall not be run off. The purse distribution due the horses involved in the dead heat shall be divided equally between them. All prizes or trophies for which a duplicate is not awardable shall be drawn for by lot.

21. Returning To The Finish After The Race. After the race, the jockey shall return their horse to the finish and before dismounting, salute the stewards. No person shall assist a jockey in removing from their horse the equipment that is to be included in the jockey's weight except by permission of the stewards. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed the equipment that is to be included in his weight.

22. Objection - Inquiry Concerning Interference. Before the race has been declared official, a jockey, trainer or their assistant trainer, owner or their authorized agent of the horse, who has reasonable grounds to believe that their horse was interfered with or impeded or otherwise hindered during the running of a race, or that any riding rule was violated by any jockey or horse during the running of the race, may immediately make a claim of interference or foul with the stewards or their delegate. The stewards shall thereupon hold an inquiry into the running of the race; however, the stewards may upon their own motion conduct an inquiry into the running of a race. Any claim of foul, objection, and/or inquiry shall be immediately announced to the public.

23. Official Order Of Finish. When satisfied that the order of finish is correct, that all jockeys unless excused have been properly weighed in, and that the race has been properly run in accordance with the rules of the Commission, the Stewards shall declare that the order of finish is official; and it shall be announced to the public, confirmed, and the official order of finish posted for the race.

24. Time Trial Qualifiers. When two or more time trial contestants have the same qualifying time, to a degree of .01 of a second, or more exact measurement if photo finish equipment permits, for fewer positions in the finals or consolation necessary for all contestants, then a draw by lot will be conducted in accordance with Subsection R65-7-7(17). However, no contestant may draw into a finals or consolation instead of a contestant which out finished such contestant. When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, no organization licensee shall move the starting gates or allow the starting gates to be moved until all trial heats are complete, except in an emergency as determined by the stewards.

R65-7-10. Objections and Protests; Hearing and Appeals.

1. Stewards To Make Inquiry Or Investigation. The stewards shall make diligent inquiry or investigation into any complaint, objection or protest made either upon their own motion, by any Racing Official, or by any other person empowered by this Article to make such complaint, protest or objection.

2. Objections. Objections to the participation of a horse entered an any race shall be made to the stewards in writing and signed by the objector. Except for claim of foul or interference, an objection to a horse entered in a race shall be made not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered. Any such objection shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter. An objection concerning claim of foul in a race may be lodged verbally to the stewards before the race results are declared official.

3. Grounds For Objections. An objection to a horse which is entered in a race shall be made on the following grounds or reasons:

A. A misstatement, error or omission in the entry under which a horse is to run.

B. That the horse which is entered to run is not the horse it is represented to be at the time of entry, or that the age is erroneously given.

C. That the horse is not qualified to enter under the conditions specified for the race, or that the allowances are improperly claimed or not entitled the horse, or that the weight to be carried is incorrect under the conditions of the race.

D. That the horse is owned in whole or in part, or leased by a person ineligible to participate in racing or otherwise ineligible to run a race as provided in these Rules.

E. That reasonable grounds exist whereby a horse was interfered with or impeded or otherwise hindered by another horse or jockey during the running of a race.

4. Horse Subject To Objection. The stewards may scratch from the race any horse which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

5. Protests. A protest against any horse which has started in a race shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race, except as noted in Subsection R65-7-10(8). Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for protest. The stewards upon their own motion may consider a protest at any time.

6. Grounds For Protest. A protest may be made upon the following grounds:

A. Any ground for objection set forth in R65-1-10(3).

B. That the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers designated to the horses which started in the race.

C. That a jockey, trainer or owner of a horse which started in the race was ineligible to participate in racing as provided in these rules.

D. That the weight carried by a horse was improper by reason of fraud or willful misconduct.

E. That an unfair advantage was gained in violation of the rules.

7. Persons Empowered To File Objection Or Protest. A jockey, trainer, owner or authorized agent of the horse which is entered or is a starter in a race is empowered to file an objection or protest against any other horse in such race upon the grounds set forth in this Article for objections and protests.

8. No Limitation On Time To File When Fraud Alleged. Notwithstanding any other provision in this Article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged, provided that the stewards are satisfied that the allegations are bona fide and susceptible to verification.

9. Frivolous Or Inaccurate Objection Or Protest. No person shall knowingly file a frivolous, inaccurate, false, or untruthful objection or protest; nor shall any person present his objection or protest to the stewards in a disrespectful or undignified manner.

10. Horse To Be Disqualified On Valid Protest. If a protest against a horse which has run in a race is declared valid, that horse may be disqualified. A horse so disqualified which was a starter in the said race, may be placed last in the order of finish or may be unplaced. The stewards or the Commission may order any purse, award or prize for any race withheld from distribution pending the determination of the protest(s). In the event any purse, award or prize has been distributed to a person on behalf of a horse which by protest or other reason is disqualified or determined not to be entitled to such purse, award or prize, the stewards or the Commission may order such

purse, award or prize returned and redistributed to the rightful person. Any person who fails to comply with an order to return any purse, award or prize previously distributed shall be suspended until its return.

11. Notification Of And Representation At Hearing. Adequate notice of hearing shall be given to every summoned person in accordance with the procedures set forth in Subsection R65-7-3(6). Every person alleged to have committed a rule violation or who is called to testify before the stewards is entitled at the persons expense to have counsel present evidence and witnesses on his behalf and to cross-examine other witnesses at the hearing.

12. Testimony And Evidence At Hearing. Every person called to a hearing before the stewards for a rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law.

13. Duty Of Disclosure. It is the duty and obligation of every licensee to make full disclosure at a hearing before the Commission or before the stewards of any knowledge he or she possesses of a violation of any racing law or of the rules of the Commission. No person may refuse to testify at any hearing on any relevant matter except in the proper exercise of a legal privilege, nor shall any person testify falsely.

14. Failure To Appear. Any licensee or summoned person who fails to appear before the stewards or the Commission after they have been ordered personally or in writing to do so, may be suspended pending appearance before the stewards or the Commission. Nonappearance of a summoned person after adequate notice may be construed as a waiver of right to be present at a hearing.

15. Record Of Hearing. All hearings before the stewards or Commission shall be recorded. That portion at a hearing constituting deliberations in executive session need not be recorded. A written transcript or a copy of the tape recording shall be made available to any person alleged to have committed a violation of the Act or the rules upon written request and payment of appropriate reimbursement cost(s) for transcription or reproduction.

16. Vote On Steward's Decision. A majority vote shall decide any question to which the authority of the stewards extends. If a vote is not unanimous, the dissent steward shall provide a written record to the Commission of the reasons for such dissent within 72 hours of the vote.

17. Rulings By The Stewards. Any ruling or order issued by the stewards shall specify the full name of the licensee or person subject to the ruling or order; most recent address on file with the Commission; date of birth; social security number; statement of the offense charged including any rule number; date of ruling; fine and/or suspension imposed or other action taken; changes in the order of finish and purse distribution in a race, when appropriate; and any other information deemed necessary by the stewards or the Commission. Any member of a Board of Stewards may, after consultation with and by mutual agreement of the other stewards, issue an Order or Notice signed by one steward on behalf of the Board of Stewards. Subsequently, an Order containing all three stewards' signatures shall be made part of the official record.

18. Summary Suspension Of Occupation Licensee. If the stewards or the Commission find that the public health, safety, or welfare require emergency action and incorporates such finding to that effect in any Order, summary suspension may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in Subsection R65-7-10(19).

19. Duration Of Suspension Or Revocation. Unless execution of an order of suspension or revocation is stayed by the Commission or a court of competent jurisdiction, a person's occupation license, suspended or revoked, shall remain suspended or revoked until the final determination has been made pursuant to the provisions of Section R65-7-5.

20. Grounds For Appeal From Decision Of The Stewards. Any decision of the stewards, except decisions regarding disqualifications for interference during the running of a race, may be appealed to the Commission; and such decision may be overruled if it is found by a preponderance of evidence that:

A. The stewards mistakenly interpreted the law; or

B. The Appellant produces new evidence of a convincing nature which, if found to be true, would require the overruling of the decision; or

C. The best interests of racing and the State may be better served.

21. Appeal From Decision Of The Stewards. The Commission shall review hearings of any case referred to the Commission by the stewards or appealed to the Commission from the decisions of the stewards except as otherwise provided in this Article. Upon every appealable decision of the stewards, the person subject to the decision or Order shall be made aware of his right to an appeal before the Commission and the necessary procedures thereof. Appeals shall be made no later than 72 hours or the third calendar day from the date of the rendering of the decision of the stewards unless the Commission for good cause extends the time for filing not to exceed 30 days from said rendering date. The appeal shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; and shall set forth the facts and any new evidence the appellant believes to be grounds for an appeal before the Commission. Action on such a hearing request must commence by the Commission within 30 days of the filing of the appeal. An appeal shall not affect a decision of the stewards until the appeal has been sustained or dismissed or a stay order issued.

22. Appointment Of Hearing Examiners. When directed by the Commission, any qualified person(s) may sit as a hearing examiner(s) for the taking of evidence in any matter pending before the Commission. Any such hearing examiner shall report to the Commission Findings of Fact and Conclusions of Law, and the Commission shall determine the matter as if such evidence had been presented to the full Commission.

23. Hearings On Agreement. Persons aggrieved as of the result of a stewards' ruling in a preliminary or trial race may request a hearing before the executive director of the Commission to review same. If all interested parties waive the right to receive ten day notice of hearing, such a hearing may be heard on a day certain within seven days after the preliminary or trial race in question. All such appeals shall be heard on days set by the executive director of the Commission or anyone acting in his stead.

24. Temporary Stay Order. The Executive Director may, upon consultation with the direction of a minimum of three Commissioners, issue or deny a temporary stay order to stay execution of any ruling, order or decision of the stewards except stewards' decisions regarding disqualifications for interference during the running of a race. Any application for a temporary stay shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; shall set forth the facts and any evidence to justify the issuance of the stay; and shall be filed with the Office of the Commission as specified in Subsection R65-7-3(7). The granting of a temporary stay order shall carry no presumption that the stayed decision of the stewards is or may be invalid, and a temporary stay order may be dissolved at any time by further order of the executive director upon consultation with and the direction of a minimum of three Commissioners.

25. Appearance At Hearing Upon Appeal. The Commission shall notify the Appellant and the stewards of the date, time and location of its hearing in the matter upon appeal. The burden shall be on the appellant to provide the facts

necessary to sustain the appeal.

26. Complaints Against Officials. Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the Commission by the stewards, together with a report of the action taken or the recommendation of the stewards. Complaints against any stewards shall be made in writing to the executive director of the Commission and signed by the complainant.

27. Rulings On Admissibility And Evidence. In all hearings, the chairperson, chief steward or such other person as may be designated, shall make rulings on admissibility and introduction of evidence. Such a ruling shall prevail; except when a Commission member or a steward requests a poll of the panel, and the ruling overturned by majority vote.

R65-7-11. General Conduct.

1. Conditions Of Meeting Binding Upon Licensees. The Commission, recognizing the necessity for an organization to comply with the requirements of its license and to fulfill its obligation to the public and the State of Utah with the best possible uninterrupted services in the comparatively short licensed period, herein provides that all organizations, officials, horsemen, owners, trainers, jockeys, grooms, farriers, organization employees, and all licensees who have accepted directly or indirectly, with reasonable advance notice, the conditions defined by these rules under which said organization engages and plans to conduct such race meeting, shall be bound thereby.

2. Trainer Responsibility. The trainer is presumed to know the "Rules of Racing" and is responsible for the condition, soundness, and eligibility of the horses he enters in a race. Should the chemical analysis, urine or otherwise, taken from a horse under his supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the trainer or person or persons under his supervision having care or custody of such horse. At the discretion of the stewards or Commission, the trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of this rule, the trainer is also responsible for any puncture mark on any horse he enters in a race, found by the stewards upon recommendation of the official veterinarian to evidence injection by syringe. If the trainer cannot be present on race day, he shall designate an assistant trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the stewards. Failure to fully disclose the actual trainer of a horse participating in an approved race shall be grounds to disqualify the horse, and subject the actual trainer to possible disciplinary action by the stewards or the Commission. Designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the assistant trainer under such absolute responsibility also. Willful failure on the part of the trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the stewards for further action.

3. Altering Sex Of Horse. Any alteration to the sex of a horse from the sex as recorded on the Certificate of Foal Registration or other official registration Certificate of such horse shall be immediately reported by the trainer to the racing secretary and the official horse identifier if such horse is registered to race at any race meeting.

4. Official Workouts And Schooling Races. No trainer shall permit a horse in his charge to be taken on to the track for training or a workout except during hours designated by the organization. A trainer desiring to engage a horse in a workout or schooling race shall, prior to such workout or race, identify the horse by registered name and tattoo number when requested to do so by the stewards or their authorized representative.

5. Intoxication. No licensee, employee of the organization or its concessionaires, shall be under the influence of intoxicating liquor, the combined influence of intoxicating liquor and any controlled dangerous substance, or under the influence of any narcotic or other drug while within the enclosure. No person shall in any manner or at any time disturb the peace or make themselves obnoxious on the enclosure of an organization.

6. Firearms. No person shall possess any firearm within the enclosure unless he is a fully qualified peace officer as defined in the laws of the State of Utah, or is acting in accordance with Title 53, Chapter 5, Part 7, Concealed Weapons Act and Title 76, chapter 10, Part 5, Utah Code. A person carrying a concealed weapon may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

7. Financial Responsibility. No licensee shall willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with his operations as a licensee; nor shall he falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due. A commission authorized license may be suspended pending settlement of the financial obligation. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a court.

8. Checks. No licensee shall write, issue, make or present a bad check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies. The fact that such check is returned to the payee by the bank as refused is a ground for suspension pending satisfactory redemption of the returned check.

9. Gratuity To Starter Or Assistant Starter. No person shall offer or give money or other gratuity to any starter or assistant starter, nor shall any starter or assistant starter receive money or other compensation, gratuity or reward, in connection with the running of any race or races except compensation received from an organization for official duties.

10. Possession Of Contraband. No person other than a veterinarian or an animal technician licensed by the Commission shall have in his possession within the enclosure during sanctioned meetings any prohibited substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection except as provided in Subsection R65-7-8(1). No person shall have in his or her possession within the enclosure during any recognized meeting any device other than the ordinary whip which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

11. Bribes. No person shall give, or offer or promise to give, or attempt to give or offer any money, bribe or thing of value to any owner, trainer, jockey, agent, or any other person participating in the conduct of a race meeting in any capacity, with the intention, understanding or agreement that such owner, trainer, jockey, agent or other person shall not use his best efforts to win a race or so conduct himself in such race that any other participant in such race shall be assisted or enabled to win such race; nor shall any trainer, jockey, owner, agent or other person participating at any race meeting accept, offer to accept, or agree to accept any money, bribe or thing of value with the intention, understanding or agreement that he will not use his

best efforts to win a race or to so conduct himself that any other horse or horses entered in such race shall thereby be assisted or enabled to win such race.

12. Trainer's Duty To Ensure Licensed Participation. No trainer shall have in his custody within the enclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a horse owner by the Commission unless such owner has filed an application for license as a horse owner with the Commission and the same is pending before the Commission; nor shall any trainer have in his employ within the enclosure any groom, stable employee, stable agent, or other person required to be licensed, unless such person has a valid license. All changes of commissioned licensed personnel shall be reported immediately to the Commission.

13. Conduct Detrimental To Horse Racing. No licensee shall engage in any conduct prohibited by law and by the rules of the Commission, nor shall any licensee engage in any conduct which by its nature is unsportsmanlike or detrimental to the best interest of horse racing.

14. Denial Of Access To Private Property. Nothing contained in these rules shall be deemed, expressly or implicitly, to prevent an organization from exercising the right to deny access to or to remove any person from the organization's premises or property for just cause.

15. Tricks/Schemes. No person shall falsify, conceal, or cover up by trick, scheme, or device a material fact; or make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying selling, or racing of such animal.

16. Prearranging The Outcome Of A Race. No licensed or unlicensed person may attempt or conspire to prearrange the outcome of a race.

R65-7-12. Fire Prevention and Security.

1. Security Control. Every organization conducting a race meeting shall maintain security controls over its premises, and such security controls are subject to the approval of the Commission.

2. Identification Required. No person shall be admitted to a restricted area within the enclosure without a license, visitor's pass, or other identification issued by the Commission or the organization on his person. Whenever deemed advisable, the stewards or the organization may require the visible display of the identification as a badge. No person shall use the license or credential issued to another, nor shall any person give or loan his license or credential to any other person.

3. Organization Credentials. The racing organization shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its meeting are licensed as required by this Article; provided, however, that no such system or methods may exclude any investigator or employee of the Commission or any peace officer when on duty; nor shall any person be excluded solely on the basis of sex, color, creed, or national origin or ancestry.

4. Organization To Prevent Unauthorized Access To Restricted Areas. Unless granted exemption by the Commission, every organization shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized. Nothing herein shall be construed to exclude members of the Commission and any staff members of the Commission in the conduct of official duties.

5. Examination Of Personal Effects. The Commission, its authorized officers or agents may enter the stables, rooms, or other places within the premises of a recognized meeting to inspect and examine the personal effects and property of any licensee or other person in or about or permitted access to any restricted area; and each licensee in accepting his license, and each person entering such restricted area does thereby consent thereto.

6. Obedience To Security Officers And Public Safety Officers. No licensee shall willfully ignore or refuse to obey any order issued by the stewards; the Commission; or any security officer of the organization; or any public officer of any police, fire or law enforcement agency when such order is issued or given in the performance of duty for the purpose of controlling any hazardous situation or occurrence. No person shall interfere with public safety officers, security officers or any racing official in the performance of their duties.

R65-7-13. Drugs and Medication Exceptions and Illegal Practices.

1. Horses Tested. The winner of every race and such other horses as the stewards or commission veterinarian may designate shall be escorted by the veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the commission veterinarian or his assistant.

2. Trainer Present at Testing. The trainer, or his authorized representative, must be present in the testing enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the trainer or his representative, as witness of taking of the specimen. Willful failure to be present at or a refusal to allow the taking of the specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension and fine by the stewards and the matter shall be referred to the Commission for such further penalty as may be determined.

3. Specimens Delivered to Laboratory. All specimens taken by or under the direction of the commission veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the laboratory. The container of specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission.

4. Medication. The commission veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission.

5. The Only Non-Steroidal Anti-Inflammatory Drug Permitted. Phenylbutazone shall be administered to the horse no later than 24 hours prior to the time the horse is scheduled to race.

6. Phenylbutazone Levels Permitted and Penalty. No urine sample taken from a horse shall exceed 165 micrograms of phenylbutazone or its metabolites per milliliter of urine or shall not exceed 5 micrograms per milliliter of blood plasma. On a first violation period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of $250.00; at concentrations above 10 ug/ml plasma: a fine of up to $500.00.

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10

ug/ml plasma or serum: a minimum fine of $500.00; at concentrations above 10 ug/ml plasma: a fine of up to $1,000.00.

On a third or subsequent violation within a 12-month period: a fine of $1,000.00, a suspension of 30 days, and loss of purse.

7. Administered under Direction of Commission Licensed Veterinarian. Phenylbutazone must be administered under the direction of a commission licensed veterinarian.

8. List Provided. Horses which are on phenylbutazone shall not be indicated on the daily racing programs or any other publications except that a list of horses on phenylbutazone will be kept by the stewards.

9. Lasix Treatment. Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the bleeder list and for treatment on race days with the approved medication to prevent or limit bleeding during racing.

10. Bleeders Listing. To be placed on the bleeders list, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. A Commission licensed veterinarian, following his or her personal examination of a horse, or after consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. A universal bleeders certificate is required.

11. License Required. In any and all cases, private veterinarians must be licensed with the Utah Horse Racing Commission as a veterinarian in order to administer Lasix.

12. Horse Removed From Bleeders List. A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. Treatment Procedure. Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered by a Commission licensed veterinarian, such dosage not to exceed 250 mg. The bleeder medication is administered by the trainers veterinarian, and must be witnessed by the trainer or his designee upon their request. Administration of the bleeder medication must be reported in writing on a form designated by the Commission, to the track management no later than two hours prior to the scheduled post time of the last live race of the program.

14. Lasix Levels Permitted and Penalty. Any horse whose post race blood tests contains a level in excess of 80 nanograms of furosemide per milliliter of plasma will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations. Any horse whose post-race urine creatinine is less than 40 milligrams creatinine per 100 milliliters of urine, and the ratio of urine furosemide to urine creatinine does not exceed 0.15, with urine furosemide being measured in micrograms per milliliter of urine will be said to be positive for Lasix overage and in violation of Utah Horse Racing rules.

A. A finding of a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facia evidence that the medication was administered to the horse and carried in the body of the horse while participating in the race.

B. In these cases, a fine and/or suspension will be levied to such horse trainer under the trainer responsibility rule and the horse will be disqualified from the race.

15. Horses Designated. The horses' trainer or designated agent is responsible to enter horses correctly indicating the prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily program with a Lasix or "L". A list of horses approved for and using Lasix medication will be maintained by the stewards.

16. Bleeder Disqualification. Any horse that bleeds a second time in Utah shall not be able to race for a period of 30 days from the date of the second bleeding offense. Any horse that bleeds for a third time shall be suspended from racing for a period of one year from the date of the third offense. Any horse bleeding for the fourth time will be given a lifetime suspension from racing.

17. Disqualification of Owner or Trainer. A horse owner or trainer found to have committed illegal practices under this chapter or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and shall be distributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of the other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected.

18. Hypodermic Instruments Prohibited. Except by specific written permission of the presiding steward, no person within the grounds of the racing association where the horses are lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in any of his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into any horse of any medication prohibited by this rule. Every racing association is required to use all reasonable efforts to prevent the violation of this rule.

19. Search Provisions. Every racing association, the Commission or the stewards shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith.

20. Daily Medication Reports. All practicing veterinarians must submit daily to the commission veterinarian a medication report form furnished by the Commission containing the following:

A. Name, age, sex and breed of the horse.

B. The permitted drug used (Bute or Lasix).

C. The time administered.

D. The route of the administration.

E. The report must be dated and signed by the veterinarian so administering the medication. Any such report is confidential and its contents shall not be disclosed except in a proceeding before the stewards or the Commission or in the exercise of the Commission's jurisdiction.

21. Prima Facia Evidence. If the stewards find that any non-approved medication, for which the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race or post-race test sample, such presence shall constitute prima facia evidence that the horse has been illegally medicated.

22. Trainer Responsibility. Under all circumstances, the horse of record trainer shall be responsible for the horse he trains.

KEY: horses
June 9, 2003 **4-38-4**
Notice of Continuation August 29, 2006

R70. Agriculture and Food, Regulatory Services.
R70-920. Packaging and Labeling of Commodities.
R70-920-1. Authority.

Promulgated under authority of Section 4-9-2.

R70-920-2. Adopted by Reference.

The Uniform Packaging and Labeling Regulation, published in the National Institute of Standards and Technology (NIST) Handbook 130, 2001 edition, is hereby adopted by the department, and incorporated by reference within this rule.

KEY: inspections
July 2, 1997 **4-9-2**
Notice of Continuation August 29, 2006

R70. Agriculture and Food, Regulatory Services.
R70-930. Method of Sale of Commodities.
R70-930-1. Authority.

Promulgated under authority of Section 4-9-2.

R70-930-2. Adopted by Reference.

Except as modified by the department, the Uniform Regulation for the Method of Sale of Commodities as published in the National Institute of Standards and Technology (NIST) Handbook 130, 2001 edition, is hereby adopted by the department, and incorporated by reference within this rule.

R70-930-3. Modifications.

1. Berries and small fruits - if sold by volume, shall have the following capacities:

(a) Metric Capacities - 250 milliliters, 500 milliliters, or 1 liter.

(b) Inch-Pound Capacities - 1/2 dry pint, having a capacity of 16.8 cubic inches and containing not less than six ounces; 1 dry pint, having a capacity of 33.6 cubic inches and containing not less than twelve ounces; 1 dry quart having a capacity of 67.2 cubic inches and containing not less than twenty-four ounces; except that weights used in the sale of red currants shall be 21 ounces for quarts, 10.5 ounces for pints and 5.3 ounces for half pints.

KEY: inspections
July 2, 1997 **4-9-2**
Notice of Continuation August 29, 2006

R70. Agriculture and Food, Regulatory Services.
R70-940. Standards and Testing of Motor Fuel.
R70-940-1. Authority and Scope.

A. Promulgated under Authority of Section 4-33-4 and Subsection 4-2-2(1)(j).

B. Scope: This rule establishes the requirements for the blending and sale of motor fuel in the state of Utah.

R70-940-2. Standards.

Motor fuels are to meet the following standards:

A. "Octane." (R+M)/2. ASTM D-4814 (ASTM - American Standard of Testing Materials).

B. "Vapor Pressure." ASTM D-323 on Reid Vapor Pressure and ASTM's Information Document on Oxygenated Fuels, Section 4.2.1.

C. "Distillation." ASTM D-86 and ASTM revised D-4814 relative to alcohol blends (along with ASTM's Information Document on Oxygenated Fuels).

D. "Water Tolerance." ASTM D-4814.

E. "Phase Separation." Must be homogenous, no phase separation.

F. "Corrosivity." ASTM D-4814.

G. "Benzene." ASTM D-3606.

H. "Flash Point." ASTM D-93 or D-56.

I. "Gravity." ASTM D-1298.

J. "Sulfur." (X-ray method) ASTM D-2622, 1266, 1552, 2622 or 4294.

K. "Aromatics." ASTM D-1319.

L. "Leads." ASTM D-3237.

M. "Cloud point." ASTM D-2500.

N. "Conductivity." ASTM D-2624.

O. "Cetane" ASTM D-976 or 4737.

P. "Cosolvents." Methanol or ethanol based fuels shall include such cosolvents as are required to increase the water tolerance of the finished gasoline blend to the level specified in R70-940-2-D above.

Q. "Method of Operation." Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment.

R. "Maintenance of Equipment." All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating condition throughout the period of such service.

S. "Product Storage Identification." The fill connection for any petroleum product storage tank or vessel supplying retail motor fuel devices shall be permanently, plainly, and visibly marked as to product contained. When the fill connection device is marked by means of color code, the color key shall be conspicuously displayed at the place of business.

R70-940-3. Labels.

All motor fuel kept, offered or exposed for sale or sold containing at least one percent by volume methanol or ethanol or ethers must be labeled in a prominent, conspicuous manner," "% METHANOL", "% ETHANOL", or "% ETHERS".

A. Letters on the label must be at least 1 1/2 inches high and in contrasting colors.

B. Labels must be located on the face of each dispenser near the area designating the grade of the product.

R70-940-4. Preparation.

All storage tanks and equipment must be purged and cleansed before using methanol, ethanol or ether blend motor fuels.

R70-940-5. Water Content.

All storage tanks must be kept free from water content.

R70-940-6. Bill of Lading.

Bulk sales of all motor fuels shall be accompanied by a copy of the bill of lading and a delivery ticket containing the following information:

A. Name and address of the vendor and purchaser.

B. Date delivered.

C. Quantity delivered and the quantity upon which the price is based.

D. Identification of the product sold, including grade and indicating the percent of methanol, ethanol or ethers in the blend.

E. The above information must be available at each retail outlet and furnished to the inspector upon request.

R70-940-7. Blending.

A. Blending of motor fuels will be done only at refineries or at retail outlets equipped with calibrated dispensers or tank blenders that accurately measure the products to be blended. The finished blend must meet the requirements of octane, vapor pressure, distillation, and other standards as outlined by ASTM.

A separate fixed tank or a method approved by the Utah State Department of Agriculture and Food shall be used for blending the "methanol or ethanol-based fuel" into the gasoline.

KEY: inspections
February 12, 2002 4-33-4
Notice of Continuation August 29, 2006

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor and to serve beer.

(3) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(4) "COUNTER" means a level surface on which patrons consume food.

(5) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(6) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(7) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(8) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(9) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding one ounce and has a meter which counts the number of pours served.

(10) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(11) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(12) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(13) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(14) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association.

(15) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(16) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(17) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(18) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(19) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(20) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(21) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

R81-1-3. General Policies.

(1) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor that is at least 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.

(2) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(3) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(4) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy.

(5) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(6) Returned Checks.

The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(a) Insufficient Funds;

(b) Refer to Maker; and

(c) Account Closed.

Receipt of a check payable to the department which is returned by the bank for any of these reasons may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or

package agent's bond.

(7) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-6.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-6.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer=s, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of the same type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three minor violations regardless of type: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of the same type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three moderate violations regardless of type: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, and involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(ii) Second occurrence of the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(iii) More than two occurrences of any type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of any type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or up to a $500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X	X		

2nd		100 to 500			
3rd		200 to 500	1 to 5		
Over 3		500 to 25,000	6 to		X
Moderate					
1st	X	to 1,000			
2nd		500 to 1,000	3 to 10		
3rd		1,000 to 2,000	10 to 20		
Over 3		2,000 to 25,000	15 to		X
Serious					
1st		500 to 3,000	5 to 30		
2nd		1,000 to 9,000	10 to 90		
Over 2		9,000 to 25,000	15 to		X
Grave					
1st		1,000 to 25,000	10 to		X
Over 1			15 to		X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days
Minor			
1st	X X		
2nd	X	to 25	
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st	X	to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30
Serious			
1st		to 100	5 to 30
2nd		to 150	10 to 90
Over 2		to 500	15 to 120
Grave			
1st		to 300	10 to 120
Over 1		to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and whether the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Presiding Officers.

(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(iii) 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.

(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) and (d) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(f) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the

license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) 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; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall 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.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) 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.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) 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, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer 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.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the

respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(5)(c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63-46b-2(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-10(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63-46b-16, -17, and -18.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63-46b-16, -17, and -18, and Section 32A-1-120.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written

objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed one ounce; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed one ounce.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) brands of liquor dispensed through the dispensing system;

(ii) beginning and ending meter readings by brand or sales price level and the number of portions dispensed through the dispensing system;

(iii) number of portions sold by brand or sales price level; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances by brand or sales price level.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than one ounce of primary spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) A licensee or his employee shall not:

(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.

(k) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-10. Wine Dispensing.

(1) Each licensee shall keep daily records that compare the number of portions of wine by the glass dispensed to the number of portions sold. These records shall indicate:

(a) the brands of each wine dispensed by the glass;

(b) the portion size, not to exceed five ounces per portion, and the number of portions dispensed by the glass of each wine by brand and sales price level;

(c) the portion size and number of portions sold by the glass of each wine by brand and sales price level; and

(d) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

These records must be made available for inspection and audit by the department or law enforcement.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(40) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(54) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9 and R81-1-10 must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(e) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(f) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(g) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

(i) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must

complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged

victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally

disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32A-12-401(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32A.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(28), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program,

radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104 and -401.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63-46a-3 and 32A-1-107.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

(1) Purpose. Utah Code Section 52-4-7.8 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-7.8, 63-46a-3 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-7.8:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(A).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do no apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department=s standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department=s current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" means a person who is actually, apparently, or obviously under the influence of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of alcoholic beverages or said substances, to a degree that the person may endanger himself or another.

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

KEY: alcoholic beverages

August 25, 2006	**32A-1-107**
Notice of Continuation August 31, 2006	**32A-1-119(5)(c)**
	32A-3-103(1)(a)
	32A-4-103(1)(a)
	32A-4-203(1)(a)
	32A-4-304(1)(a)
	32A-4-403(1)(a)
	32A-5-103(1)(a)
	32A-6-103(2)(a)
	32A-7-103(2)(a)
	32A-8-103(1)(a)
	32A-8-503(1)(a)
	32A-9-103(1)(a)
	32A-10-203(1)(a)
	32A-10-303(1)(a)
	32A-11-103(1)(a)

R81. Alcoholic Beverage Control, Administration.
R81-6. Special Use Permits.
R81-6-1. Application.

An application for a special use permit shall be included in the agenda of the monthly commission meeting for consideration for issuance of a special use permit when the requirements of Sections 32A-6-102 and -103 have been met, and a completed application has been received by the department.

R81-6-2. Warning Sign.

All public service permittees which utilize a hospitality room shall display in a prominent place therein a "warning sign" as defined in R81-1-2.

R81-6-3. Direct Delivery.

Industrial, manufacturing, scientific, educational, and health care special use permittees may purchase alcohol directly from the manufacturer and have it shipped directly to the permittee's address, provided the alcohol is used for industrial, manufacturing, scientific, educational, or health care purposes.

R81-6-4. Public Service Permittee Operating Guidelines.

(1) A public service permittee that operates on an interstate basis may purchase liquor outside of the state and bring it into the state and/or purchase liquor within the state and sell, store and serve it to passengers traveling on the permittee's public conveyance for consumption while en route on the conveyance. However, all liquor utilized within a public service permittee's hospitality room must be purchased from a state liquor store or package agency within this state.

(2) All liquor transported from outside the state to the permittee's storage facility shall be carried in sealed conveyances which may be inspected at any time by the department.

(3) A public service permittee shall keep available and open for audit during regular business hours, complete and accurate records of alcoholic product shipments to and from their storage facility. Records shall be kept for a minimum of three years.

(4) A public service permittee shall allow the department, through its auditors or examiners, to audit all records relating to the storage, sale, consumption and transportation of alcoholic products by the permittee.

R81-6-5. Educational Wine Judging Seminars.

(1) Definition of Applicant. An applicant is any person or organization who is applying for an educational wine judging seminar permit, whose purpose is to inform and educate about the qualities and characteristics of wines.

(2) Application. The applicant must meet the requirements and qualifications for a scientific or educational special use permit found in Sections 32A-6-102, -103, and -401. In addition, the applicant must submit to the department a detailed proposal of the seminar which must include the qualifications of the judges, the number of wines being submitted by the wineries, and the location of the seminar. Additional information may be requested by the commission or department to properly evaluate the application.

(3) The applicant must post a cash or corporate surety bond in the penal sum of $1,000 payable to the department, which the permittee has procured and must maintain for as long as the permittee continues to operate as a special use permittee. The bond shall be in a form approved by the attorney general, conditioned upon the permittee's faithful compliance with the Act and the rules of the commission. If the surety bond is canceled due to the permittee's negligence, a $300 reinstatement fee may be assessed. No part of any cash bond so posted may be withdrawn during the period the permit is in effect. A bond filed by a permittee may be forfeited if the permit is finally revoked.

(4) The application for the educational wine judging seminar permit must be completed and submitted 90 days prior to the seminar date.

(5) Restrictions. Any person granted an educational wine judging seminar permit must, in addition to the restrictions in Section 32A-6-105, meet the following requirements and restrictions:

(a) The techniques used in judging the wines must meet internationally accepted techniques of sensory or laboratory evaluation, and the wines used may not be consumed.

(b) All unopened bottles must be returned to the department and any wine product residual in open bottles must be destroyed by the permittee.

(c) The educational wine judging seminar permit has an automatic expiration date of three days following the scheduled ending date of the seminar.

(d) The permittee must comply with R81-1-17 regarding advertising of the seminar.

(6) Procedures for Handling the Seminar.

(a) The permittee must order all wines used in the seminar from the department. The department will order the wines from the wineries designating on the order that they are for a wine judging seminar. The permittee must make prior arrangements with the wineries to have the wines sent to the department at no charge and freight prepaid.

(b) The wines will be entered into the department accounting system at no cost and will be given a special department number, designating the wines as those to be used with an educational wine judging seminar permit and not to be consumed.

(c) The wines will be delivered to the permittee from the department. After the seminar, the permittee will return all unopened bottles of wine to the department and the permittee will destroy any other residual wine products left. The permittee will pay to the department a fee of two dollars for every bottle of wine used in the judging seminar.

(d) All wines returned to the department become the property of the state and will be destroyed under controlled conditions or will be given a new department number and sold in the state's retail outlets, which profits will be property of the state.

R81-6-6. Religious Wine Permits.

(1) Purpose. This rule outlines the procedures for a religious wine permit holder to purchase wine for religious purposes, and the procedures department personnel shall follow to process the purchase.

(2) Application of Rule.

(a) The permit holder may purchase any generally listed wine directly off of the shelf of any state store or package agency at a charge of cost plus freight. The cashier shall first verify that the purchasing religious organization is a holder of a permit on file in the department's licensee/permittee data base. The cashier shall determine the cost plus freight price of the wine. The wine may be purchased only with cash or a check belonging to the religious organization, and not with an individual's personal check or credit card. Checks shall be deposited in the ordinary course of business with other checks. If wines are purchased by the case, the cases must be opened and the individual bottles marked with the state label.

(b) The permit holder may order wine for religious purposes directly from the winery and have the winery ship the wine prepaid at a charge of cost plus freight to the department's central administrative warehouse. The warehouse shall deliver the wine to the state store or package agency nearest to the permit holder's church. The state store or package agency shall open any cases and mark individual bottles with the state label.

The state store or package agency shall notify the permit holder when the product is available for pick-up.

(c) The permit holder may place a special order for wines not generally listed by the department only if the winery will not sell directly to the permit holder. Special orders may be placed only with the special order clerk at the department's administrative office. No special orders may be placed with a state store or package agency. The special order clerk shall verify that the purchasing religious organization is on file in the department's licensee/permittee data base, place the order, assign it a special order code number, assess a charge of cost plus freight, and have the wine delivered to the state store or package agency nearest to the permit holder's church. The state store or package agency shall notify the permit holder when the product is available for pick-up. All procedures for processing the purchase that are outlined in (a) above shall be followed by the state store or package agency to complete the sale.

KEY: alcoholic beverages
June 1, 2004 **32A-1-107**
Notice of Continuation August 23, 2006

R81. Alcoholic Beverage Control, Administration.
R81-7. Single Event Permits.
R81-7-1. Application Guidelines.

(1) A single event permit application for the purpose of conducting a convention, civic or community enterprise, shall be included in the agenda of the monthly commission meeting for consideration for issuance of a single event permit, when the requirements of Section 32A-7 have been met, and a completed application has been received by the department. "Conducting" as used herein means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.

(2) Pursuant to Section 32A-7-101(1) and (3), the commission may grant four single event permits within a calendar year to each bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association. The commission may also grant four single event permits within a calendar year to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.

(3) If the applicant is a bona fide incorporated association, corporation, or a separately incorporated subordinate lodge, chapter or local unit thereof, the applicant shall submit a copy of its certificate and articles of incorporation from the state, which reflect that the applicant has been in existence for at least one year prior to date of application.

(4) If the applicant is a bona fide limited liability company, the applicant shall submit a copy of its limited liability company certificate of existence from the state, which reflects that the applicant has been in existence for at least one year prior to date of application.

(5) If the applicant is a bona fide church, political organization, or recognized subordinate chapter or local unit thereof, the applicant shall submit proof of its tax exempt status as provided by the Internal Revenue Service.

(6) Any subordinate or local entity of a parent entity must also establish that it is duly "recognized" by the parent entity by providing written verification of its "recognized" status such as a letter from, or bylaws of the parent entity. The subordinate or local unit shall also furnish proof that the parent entity qualifies under sections (1), (2), (3), (4), and (5) of this rule. These requirements shall not apply in situations where the subordinate or local unit is separately incorporated.

(7) Calendar year is defined as January 1 through December 31.

(8) The single event permit bond, as required by Section 32A-7-105, shall not be released back to the single event permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(9) If an organization or individual other than the one applying for the single event permit posts the $1,000 bond required by Section 32A-7-105, an affidavit must be submitted attesting that the $1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(10) The commission may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32A-7. The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-7-2. Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of alcohol at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a single event permit for such events, the commission must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the commission will issue a single event permit for an outdoor or a large-scale public event. However, this rule gives the commission discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63-46A-3, 32A-1-107 and 32A-7-101 and -104.

(4) Policy.

(a) Before a single event permit will be issued by the commission to allow the sale of alcoholic beverages at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 62A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two alcoholic beverages shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to

supervise the sale and dispensing of alcoholic beverages.

(vi) If minors may attend the event, all dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the commission, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, may in its discretion relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the commission may in its discretion require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:

(i) Placing limits on the variety of alcoholic beverages served at the event.

(ii) Requiring that alcoholic beverages be distinguishable in appearance from non-alcoholic beverages.

(iii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for single event permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.

(b) Department staff shall provide this information to the commissioners prior to the commission's consideration of the single event permit application.

(c) The commission shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the single event permit.

R81-7-3. Price Lists.

(1) A single event permittee shall have a printed alcoholic beverage price list available for inspection containing prices of mixed drinks, wine, beer, and heavy beer. The list shall include any charges for the service of packaged wines or heavy beer, and any service charges for the supply of glasses, chilling, or wine service.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages
August 1, 2003 **32A-1-107**
Notice of Continuation August 24, 2006

R81. Alcoholic Beverage Control, Administration.
R81-8. Manufacturers (Distillery, Winery, Brewery).
R81-8-1. Application.

An application for a manufacturer (distillery, winery, brewery) license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a manufacturer license when the requirements of Sections 32A-8-102, -103, and -105 have been met, and a completed application has been received by the department.

R81-8-2. Out of State Business.

(1) Purpose. Pursuant to 32A-8-101(4), brewers located outside the state must obtain a certificate of approval from the department before selling or delivering beer containing an alcohol content of less than 4% alcohol by volume to licensed beer wholesalers in this state, or if a small brewer, to licensed beer wholesalers or retailers in this state. These certificates must be renewed annually.

In addition to issuing certificates of approval to brewers who actually produce the beer, the department has also issued certificates to (1) importers that hold federal permits, and have the contractual rights to distribute and market beer for foreign breweries; and (2) marketing agents that distribute and market beer for domestic breweries. The department has also allowed brewers with a certificate of approval to market the products on behalf of other brewers under that certificate. However, this has resulted in a loss of direct regulatory authority over the breweries that actually produce the beer.

This rule ensures that each producer of beer obtain its own certificate of approval to allow its beer to be sold or delivered in this state.

(2) Application of Rule.

(a) A certificate of approval to sell or deliver beer in this state under 32A-8-101(4) may be issued only to the company that is ultimately responsible for producing the beer. The company holding the certificate may not allow another brewery to sell or deliver beer to this state under the certificate holder's certificate. A certificate of approval may not be issued to any third party such as an importer or marketing agent that does not actually manufacture or produce alcoholic beverages.

(b) This rule does not preclude the company that holds the certificate of approval from having its brand of beer produced by another brewery under contract under the brand name of the certificate holder's company. However, the certificate holder is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the certificate holder.

(c) A distillery or winery that has beer produced for it by a brewery under contract under the distillery's or winery=s brand name is deemed to be a "brewery" for purposes of 32A-8-101(4), and may be issued a certificate of approval. However, the distillery or winery is responsible to ensure that any beer produced by the contract-brewery complies with the alcoholic beverage laws of this state. Any violations committed by the contract brewery will be the responsibility of the distillery or winery that holds the certificate.

R81-8-3. Winery Tasting Facilities.

(1) Purpose. Pursuant to 32A-8-201(4), a licensed winery may allow the consumption of samples of wine on the premises of the winery as long as food is available. This rule establishes guidelines for tasting facilities on winery premises.

(2) Application of Rule. A winery licensee may operate on its manufacturing premises a tasting facility allowing the consumption of wine samples at a site approved by the department under the following conditions:

(a) The tasting area must be located on the winery premises.

(b) Food must be available in the tasting area.

(c) Records required by the department shall be kept current and available to the department for auditing purposes. This includes a daily record of all products and quantities tasted.

(d) The storage area floor plan for the tasting facility must be approved by the department and may not be relocated without department approval.

(e) Wine samples may not exceed two ounces per glass.

(f) Samples may not be removed from the winery premises.

(g) Sample tastings may not be conducted off of the winery premises.

KEY: alcoholic beverages
June 1, 2004 32A-1-107
Notice of Continuation August 24, 2006

R81. Alcoholic Beverage Control, Administration.
R81-9. Liquor Warehousing License.
R81-9-1. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a liquor warehousing license when the requirements of Sections 32A-9-102, 32A-9-103 and -105 have been met, a completed application has been received by the department, and the warehouse premises have been inspected by the department.

R81-9-2. Transportation.

Dual licensees, those who have both a liquor warehousing license and a beer wholesaling license, pursuant to Chapters 9 and 11 of the Act, may transport liquor, wine, and heavy beer to the department and to federal military installations within Utah.

R81-9-3. Records.

Each licensee shall keep available and open for audit at all times during regular business hours, complete and accurate records of shipments to or from their warehouse facility. Records shall be kept for a minimum of three years.

R81-9-4. Audits.

The liquor warehouse licensee shall allow the department, through its authorized representatives, to audit all records of their liquor warehouse license at times the department considers advisable.

R81-9-5. Inspection.

A liquor warehouse licensee shall permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the liquor warehouse facility to inspect the premises.

KEY: alcoholic beverages
April 29, 2002 32A-1-107
Notice of Continuation August 24, 2006

R81. Alcoholic Beverage Control, Administration.
R81-11. Beer Wholesalers.
R81-11-1. Application.

An application for a beer wholesaler license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a beer wholesaler license when the requirements of Section 32A-11-102, -103 and -105 have been met, and a completed application has been received by the department.

R81-11-2. Transfer of License.

The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules. However, no assignment and transfer may result in both a change of license and change of location.

R81-11-3. Conditions of Transfer.

(1) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee/transferee shall apply to the commission for approval of the assignment and transfer, and shall furnish any information the commission may require.

(2) The assignment and transfer shall not be of any force and effect until the commission has approved it.

(3) The assignee/transferee shall not take possession of the premises, or exercise any of the rights of a license until the commission has approved the assignment and transfer.

(4) No assignment and transfer shall be made within thirty days after the holder of a wholesaler license has been granted a change of location.

(5) No change of location shall be granted within ninety days after assignment and transfer of a wholesaler license.

(6) In approving any assignment and transfer of a wholesaler license, the commission may impose special conditions relating to any future connection of the former licensee or any of his employees with the business of the assignee or transferee.

(a) Prior to the imposition of any special conditions, the commission shall hold a hearing to allow the former licensee or any of his employees to attend and provide information to the commission.

(b) The commission shall provide written notice to all parties involved at least ten days prior to the hearing.

(7) No wholesaler license may be assigned to any person who does not qualify for the license under Sections 32A-11-102, and -103.

R81-11-4. Change of Trade Name.

A change of trade name may coincide with the transfer of the wholesaler license, with the commission's approval. Any licensed wholesaler may adopt a trade name or change the trade name by applying to the commission on forms provided by the department and upon receiving the commission's approval.

R81-11-5. Change in Partners.

If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R81-11-3. However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the commission directs otherwise.

KEY: alcoholic beverages
1994 32A-1-107
Notice of Continuation August 24, 2006

R81. Alcoholic Beverage Control, Administration.
R81-12. Manufacturer Representative (Distillery, Winery, Brewery).
R81-12-1. Application.

An application for a local industry representative license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a license when the requirements of 32A-8-502 and -503 have been met, and a completed application has been received by the department.

R81-12-2. Industry Participation in Educational Seminars Involving Liquor, Wine and Heavy Beer Products.

(1) Authority. This rule is pursuant to 32A-12-201(1) and (3), 32A-12-603(3) and (4), and 32A-12-606. These provisions preclude an industry member from selling, shipping, transporting, furnishing or supplying or causing the selling, shipping, transporting, furnishing or supplying of liquor, wine, and heavy beer products to another within this state other than the department, a military installation, a holder of a special use permit to the extent authorized in the permit, and a bonded liquor warehouse; preclude an industry member from supplying anything of value except as allowed by law; preclude an industry member from giving away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the department and local industry representative licensees to the extent authorized by the Act; allow an industry member to participate in educational seminars involving the department, retailers, holders of educational or scientific special use permits, or other industry members under certain conditions, but preclude the use of samples at such seminars; and allow an industry member to serve alcoholic products to others at a private social function hosted by the industry member so long as the product is not served as part of a promotion of the industry member's products or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) Definitions. For purposes of this rule:

(a) "Educational seminar" means an educational class involving the study of alcoholic beverages attended only by students who have registered in advance for the course, a privately-hosted event or social function held by a private group engaged in the study of alcoholic beverages, and a private training session held by a retailer for the purpose of educating the retailer and the retailer's employees of the qualities and characteristics of alcoholic beverages. An educational seminar does not include a seminar to which the general public is invited to attend.

(b) "Industry member" means a liquor, wine or heavy beer manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(c) "Privately-hosted event" or "private social function" means a specific social, business, or recreational event for which an entire room, area, or hall has been leased , rented, or reserved, in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests. Privately-hosted event" and "private social function" does not include an event or function to which the general public is invited whether for an admission fee or not.

(d) "Retailer" means the holder of an alcoholic beverage license or permit issued by the commission to allow the holder to engage in the sale of alcoholic beverages to consumers, or any of the holder's agents, officers, directors, shareholders, partners, or employees.

(e) "Sample" means liquor, wine and heavy beer that is placed in the possession of the department for testing, analysis, and sampling by the department, or for testing, analysis, and sampling by local industry representatives on the premises of the department. Samples are furnished by industry members to the department for these purposes at no cost, and are labeled by the department as samples. Sample does not include liquor, wine and heavy beer that is sold by the department at retail after taxes and markup have been included.

(3) General Purpose. This rule authorizes industry representatives, under certain restrictions, to attend and participate in educational seminars where liquor, wine and heavy beer products are analyzed, tested, and tasted.

(4) Application of Rule.

(a) An industry member may attend and participate in an educational seminar where liquor, wine and heavy beer products are analyzed, tested, and tasted only as the invited guest of the host of the seminar. An industry member may not directly or indirectly host, organize, or otherwise arrange for an educational seminar where such products are present.

(b) Liquor, wine and heavy beer products used at an educational seminar must be purchased by the host from the department at full retail. An industry member may not directly or indirectly furnish or otherwise provide the liquor, wine and heavy beer products for the seminar. No liquor, wine or heavy beer samples may be present or used at an educational seminar. Tastings involving samples may occur only on the department's premises in accordance with Section 32A-12-603(4)(c).

(c) An industry member may be invited by the host to lecture, and analyze, test, and taste the liquor, wine and heavy beer products during the industry member's presentation at an educational seminar.

(d) An educational seminar where liquor, wine and heavy beer products are present may not be used by an industry member to introduce retailers to new products which are not presently listed by the department for sale in this state.

(e) An educational seminar may not be open to the general public.

KEY: alcoholic beverages
August 1, 2003 **32A-1-107**
Notice of Continuation August 24, 2006

R137. Career Service Review Board, Administration.
R137-1. Grievance Procedure Rules.
R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

(2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63-46b-2 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(2)(b)(ii).

"Administrator" means the incumbent in the position defined at Section 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Appellant" means the party that is advancing an evidentiary level grievance decision to the appellate level before the board at Step 6.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Board" means the entity defined at Section 67-19a-101(2), and refers to the five-member, gubernatorial-appointed entity at Sections 67-19a-201 and 67-19a-202.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

"CSRB" and "CSRB Office" mean the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-408.

"Closing Statement" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses are heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"File" means to submit a document, grievance, petition, or other paper to the CSRB Office as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRB Office.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-408 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 5 level. However, at the appellate/step 6 level one party is designated as the appellant, the other as respondent.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRB administrator and assigned to hear a particular grievance case at the evidentiary/step 5 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63-46b-14(3)(a), of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Jurisdictional Hearing" means a hearing conducted by the administrator (or hearing officer who sits by designation to represent the administrator in these hearings) to determine timeliness, standing, jurisdiction, direct harm, and eligibility to advance a grievance issue to the evidentiary/step 5 level.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a case was appealed.

"Respondent" means the party against whom an appeal is made at the appellate/step 6 level.

"Standard of Proof" means the evidentiary standard, which in CSRB adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonable resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding official when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63-46b-1 through 63-46b-21.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 21-5-4.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except for Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRB and the CSRB hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(1), and Section R477-4-4.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-5-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRB and CSRB hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-5-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the CSRB Office or the administrator are deemed filed on the date actually received, and are so date-stamped. The date on which papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the CSRB Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator, by the designated CSRB hearing officer, or the board's chair or vice-chair.

(a) All filing dates are based upon the CSRB Office's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63-46b-7(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRB hearing officer.

(b) A person receiving a subpoena issued by the CSRB will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least two full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the requesting party delivering the subpoena to the person named, unless the CSRB Office is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail Services, or to send it by E-mail, or to send it by facsimile transmission, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A CSRB decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRB originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator by a CSRB hearing officer, or by the board's chair or vice-chair are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The CSRB Office will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRB notice, decision, order or ruling is accomplished when any of the following occurs:

(i) deposit postage prepaid with the U.S. Postal Service,

(ii) deposit with State Mail Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

(c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. Continuance/Postponement.

Timely, Written Requests. Upon receipt of a notice of hearing, or as soon thereafter as circumstances necessitating a continuance come to a party's knowledge, a party desiring to postpone the proceeding or filing of a pleading to a later date shall file a written request for continuance with the administrator.

(1) Every petition for a continuance shall specify the reason for the requested delay.

(2) In considering a request for continuance, the administrator, the appointed CSRB hearing officer, or the board shall take into account:

(a) whether the request was promptly and timely made, in writing; and

(b) whether the request is for good cause.

(3) A continuance may not be granted for insufficient cause nor as an excuse for lack of preparation.

(4) Parties must not anticipate that a given number of continuances are granted to each party, nor that a series of continuances is permitted.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16-(6) and Section 67-19a-301, the board has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2), and Sections 63-46b-15 and 63-46b-16 of the UAPA.

(3) Class Action. Pursuant to Subsection 67-19a-401(7)(c), class action grievances will not be admissible for consideration by the board under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(7)(a) and (b).

R137-1-11. Issues Appealable to the Evidentiary/Step 5 and Appellate/Step 6 Levels.

All grievances shall be reviewed for jurisdictional considerations to determine:

(1) If the CSRB hearing officers and the board lack jurisdiction to hear matters which are not included within the scope of Subsections 67-19a-202(1)(a) and 67-19a-302(1), or

(2) If issues or components of a grievance are deemed to be satisfactorily resolved they may not qualify to be advanced further under these grievance procedures according to Section R137-1-17(2), and the board may refuse to hear or take action.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the awarding of fees or costs to an employee's attorney or representative.

(2) Pro Se Status. A party or person to a grievance proceeding may be represented pro se. When a party or person is represented pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). However, pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive steps 2, 3 or 4 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be placed in writing and signed.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 2, 3, or 4 may be waived, but not steps 5 or 6. Any waiver agreed to between the parties must be in writing, dated, and signed by the parties or the parties' representatives according to Subsection 67-19a-401(2).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in processing a grievance or for not appearing at a scheduled proceeding.

(a) The administrator or appointed CSRB hearing officer shall determine the applicability of the excusable neglect standard on the basis of good cause.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63-46b-11 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance case from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator, the board, or the CSRB hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding, when based upon good cause.

(a) The administrator, the board, or the CSRB hearing officer may grant a stay for a specific period of time or may grant an indefinite stay of an evidentiary/step 5 or appellate/step 6 proceeding.

(b) In considering a request for a stay of proceedings, the administrator, the board, or the CSRB hearing officer may take into consideration whether the request is unopposed or not. If the request for a stay is unopposed, the request may be granted if based upon good cause. If the request is opposed, the request shall be considered on its merits and ruled upon accordingly.

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Section 667-19a-402, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

Step 1; A verbal discussion shall be held with the immediate supervisor. In this informal action, the employee is required to fully describe the grievance for possible resolution.

Step 2; A written form of the grievance shall be submitted to the immediate supervisor. Thus distinguished from a verbal gripe/complaint, it then becomes a formal complaint requiring a written response. Steps 2, 3 and 4 require a written response within time periods outlined in Section 67-19a-402, and are to be conducted by only one supervisor, director, etc.

Step 3; A review of the grievance is to then be conducted by the agency or division director;

Step 4; A review of the grievance is then conducted by the department head, executive director, or commissioner (or the designated representative);

Step 5; An evidentiary de novo hearing is conducted before the CSRB hearing officer.

An appellate review is conducted before the CSRB board members.

The purpose for the above steps, or levels, is to curtail employees from having to submit their grievances to persons in agency management not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances.

R137-1-15. Procedure for Grieving Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been issued a written reprimand, suspension without pay, demotion, or dismissal, imposed by the respective department head (i.e., executive director or commissioner) may appeal that action directly to the evidentiary/step 5 level.

(a) An appeal from discipline is distinguishable from a grievance.

(b) A grievance is filed at steps 1 and 2, and proceeds through steps 3 and 4.

(c) When an appeal from discipline imposed by a department head (or designated representative) occurs at the step 4 level, it may be appealed directly to the CSRB at the evidentiary/step 5 level.

(2) When appealed to the CSRB Office, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Grieving Reduction in Force.

An aggrieved employee may appeal from a reduction in force according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days with the CSRB Office.

R137-1-17. Jurisdictional Hearing.

A jurisdictional hearing is a formal adjudication conducted according to Subsection 67-19a-403(2)(b)(i) with Section 63-

46b-8 of the UAPA incorporated by reference. An administrative review of the file is an informal adjudication according to Subsection 67-19a-403(2)(b)(ii) with Section 63-46b-4 of the UAPA incorporated by reference.

(1) Procedural Issues. The administrator shall determine the following: timeliness, standing, direct harm, jurisdiction, and eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-403 and 67-19a-404.

(2) Determination. The administrator shall determine which types of grievances may be heard at the evidentiary/step 5 level. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to the evidentiary/step 5 level are precluded from further consideration in any grievance submitted for CSRB consideration.

(3) Preclusion. Those types of actions not listed in Subsections 67-19a-202(1)(a) and 67-19a-302(1) are precluded from advancement to the evidentiary/step 5 level. When the grievance is precluded from the evidentiary/step 5 level, the matter under dispute shall be deemed as final at the level of the department head/step 4 written reply according to Subsection 67-19a-302(2).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date that a jurisdictional hearing decision or an administrative review of the file decision is issued with Section 63-46b-13 of the UAPA incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the jurisdictional hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's formal adjudicative jurisdictional hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63-46b-14(3)(a) and Section 63-46b-16 of the UAPA which are incorporated by reference.

(b) The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63-46b-15 and 63-46b-17 of the UAPA which are incorporated by reference.

(6) Summary Judgment. The administrator may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step 4; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals a jurisdictional hearing decision to the Utah Court of Appeals or to the district court, the appealing party is responsible for paying all transcription costs and any transcript fees. The CSRB does not participate in the payment of these fees when appeals are taken to the appellate or trial court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63-46b-16(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to jurisdictional and evidentiary/step 5 proceedings of the CSRB, but not to appellate/step 6 proceedings unless specifically indicated.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRB administrator or the CSRB hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRB administrator or the CSRB hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63-46b-4 of the UAPA:

(a) All CSRB jurisdictional, evidentiary/step 5 and appellate/step 6 adjudications are formal adjudicative proceedings. Sections 63-46b-7 through 63-46b-11, 63-46b-14 and 63-46b-16 through 63-46b-18 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(b) An administrative review of the file pursuant to Subsection 67-19a-403(2)(b)(ii) is an informal adjudicative proceeding with Sections 63-46b-5, 63-46b-15, and 63-46b-17 of the UAPA incorporated by reference.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The CSRB hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person.

(5) Presentation of Case. Each party's representative is given the opportunity to make an opening statement. At the appropriate time, each party's representative is given the opportunity to present evidence. After each party's representative has presented its respective case, the moving party, followed by the responding party, may offer a closing statement. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the CSRB hearing officer shall note the objection for the record. A ruling is then made by the CSRB hearing officer, or the objection may be taken under advisement to be ruled upon later.

(b) The CSRB hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The CSRB hearing officer may, upon a party's motion or upon the CSRB hearing officer's own motion, dismiss the grievance or appeal with due regard for the standard of excusable neglect according to R137-1-13(3).

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRB adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsection 67-19a-406(2)(c).

(11) Hearsay Evidence. Hearsay evidence is admissible

in CSRB formal adjudicative proceedings as qualified by Subsection 63-46b-10(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Subsection 63-46b-7(1) of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the appointed CSRB hearing officer, parties to a dispute may obtain discovery. The CSRB hearing officer has discretion to entertain motions to conduct discovery on a case-by-case basis regarding the following:

(i) production of witnesses;

(ii) production of documents, records and things;

(iii) issuance of subpoenas which are issued pursuant to R137-1-6 and R137-1-8;

(iv) the taking of interrogatories;

(v) the taking of depositions, when a proposed witness is not available for giving testimony at a scheduled hearing and when a witness's testimony appears reasonably calculated to lead to the discovery of admissible evidence;

(vi) requests for admissions; and

(vii) physical and mental examinations.

(c) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the appointed CSRB hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known at the prehearing/scheduling conference, or by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Written motions, pleadings, briefs, and memoranda for all CSRB proceedings may not exceed 20 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed ten pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than ten double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests more than 20 and 10 pages respectively to the CSRB for the granting of any exceptions to the page limitation provision.

(c) The CSRB may weigh all requests to exceed the page limitation provision based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The board does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are requested to testify in a hearing.

(a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Nondisruption. The parties and their representatives, the administrator and the CSRB hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

(c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRB hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 21-5-4. The CSRB reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

(2) Hostile Witnesses. When the CSRB hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/Sequestering of Witnesses.

(a) The CSRB hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties.

(c) The CSRB hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management Representative. Prior to every hearing the agency's representative may designate a person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify. Neither the grievant nor the management representative may be excluded from the hearing.

R137-1-20. Public Hearings.

A CSRB hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator, the board, or the CSRB hearing officer may close either a portion or an entire hearing based upon a compelling reason.

(b) An evidentiary/step 5 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-5(1)(a)(i) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator, the board, or the CSRB hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c) and 67-19a-408(6).

(3) Media Presence. All hearings at the jurisdictional, evidentiary/step 5 and appellate/step 6 levels are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at the evidentiary/step 5 proceeding.

(4) Distribution of Decisions. The administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to Subsection 67-19a-408(5).

R137-1-21. The Evidentiary/Step 5 Adjudicatory Procedures.

(1) Authority of the CSRB Hearing Officer/Presiding Officer. The CSRB hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at evidentiary/step 5 hearings as set forth at Subsection 63-46b-2(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on motions, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Evidentiary/Step 5 Hearing. An evidentiary/step 5 hearing shall be a new hearing for the record according to Subsections 67-19a-406(1) and (2), held de novo, with both parties being granted full administrative process as follows:

(a) The CSRB hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRB hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary/step 5 hearing support with substantial evidence the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRB hearing officer determines in accordance with the procedures set forth above that the evidentiary/step 5 factual findings support the allegations of the agency or the appointing authority, then the CSRB hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRB hearing officer shall give deference to the decision of the agency or the appointing authority unless the agency's penalty is determined to be excessive, disproportionate or constitutes an abuse of discretion in which instance the CSRB hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRB hearing officer shall announce that the hearing is convened and is being held on the record. The CSRB hearing officer shall note appearances for the record and shall determine which party has the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRB hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRB hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the tolling period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. Notwithstanding R137-1-21(1)(h) above, following the closing of the record, the CSRB hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63-46b-10 of the UAPA, which is incorporated by reference. When the CSRB hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step 5 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step 5 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRB hearing officer, unless an appeal is taken to the appellate/step 6 level. Enforcement measures available to the CSRB include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63-46b-19(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63-46b-13 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step 5 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step 5 decision. The same CSRB hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within ten working days upon receipt of the evidentiary/step 5 decision according to the time period at Subsection 67-19a-407(1)(a)(i), not Section 63-46b-13.

(c) An appeal to the appellate/step 6 level from a CSRB hearing officer's reconsideration decision and order must be filed within ten working days upon receipt of the reconsideration or within ten working days after expiration of

the time for receipt of the reconsideration, whichever is first.

R137-1-22. The Board's Appellate/Step 6 Procedures.

(1) Transcript Production. The party appealing the CSRB hearing officer's evidentiary/step 5 decision to the board at the appellate/step 6 level shall order transcription of the evidentiary/step 5 hearing from the court reporting firm within ten working days upon receipt of acknowledgment of the appeal from the administrator.

(a) The appellant shall share an equal fee payment with the CSRB Office to the court reporting firm. Transcript production cost-sharing applies equally only to the appellant and to the CSRB Office. The CSRB Office receives the transcript original; the appellant receives a transcript copy.

(b) The respondent may inquire of the CSRB Office about obtaining a transcript copy, or may directly purchase a copy from the court reporting firm.

(2) Briefs. An appeal hearing before the board at step 6 is based upon the evidentiary record previously established by the CSRB hearing officer during the evidentiary/step 5 hearing. No additional or new evidence is permitted unless compelled by the board.

(a) The appellant in an appellate/step 6 proceeding must obtain the transcript of the evidentiary/step 5 hearing. After receipt of the transcript, the appellant has 30 calendar days to file an original and six copies of a brief with the administrator. Additionally, the respondent must be provided with a copy of the appellant's brief.

(b) After receiving a copy of the appellant's brief, the respondent then has 30 calendar days to file an original and six copies of a brief with the administrator. The appellant may file an original and six copies of a reply brief which addresses the respondent's brief.

(c) After receiving both parties' briefs, the administrator distributes the briefs and the CSRB hearing officer's evidentiary/step 5 decision to the board members.

(d) Each party is responsible for filing its original and six copies with the CSRB Office and for exchanging a copy with the opposing party.

(e) Briefs shall be date-stamped upon their receipt in the CSRB Office.

(f) The time frame for receiving briefs shall be modified or waived only for good cause as determined by the CSRB chair or vice-chair, or the administrator.

(3) Rules of Procedure. The following rules are applicable to appeal hearings before the board at the appellate/step 6 level:

(a) Dismissal of Appeal. Upon a motion by either party or upon its own motion, the board may dismiss any appeal prior to holding a formal appeal hearing if the appeal is clearly moot, without merit, improperly filed, untimely filed, or outside the scope of the board's authority.

(b) Notice. The board shall distribute written notice of the date, time, place, and issues for hearing to the aggrieved employee, to the employee's counsel or representative, to the appropriate agency official, to the agency's counsel or representative, and to the agency's management representative, at least five working days before the date set for the hearing.

(c) Compelling Evidence. The board may compel evidence in the conduct of its appeal hearings, according to Subsection 67-19a-202(3).

(d) Oral Argument/Time Limitation. The board grants up to 20 to 25 minutes to each party for oral argument. The board may grant additional time when deemed appropriate.

(e) Oral Argument Set Aside. If the board determines that oral argument is unnecessary, the parties shall be notified. However, the parties' representatives may be expected to appear before the board at the date, time, and place noticed to answer any questions raised by the board members.

(f) Argument or Memoranda. The board may require the parties to offer oral argument or submit written memoranda of law.

(4) The Board's Standards of Review. The board's standards of review based upon the following criteria:

(a) The board shall first make a determination of whether the factual findings of the CSRB hearing officer are reasonable and rational according to the substantial evidence standard. When the board determines that the factual findings of the CSRB hearing officer are not reasonable and rational based on the evidentiary/step 5 record as a whole, then the board may, in its discretion, correct the factual findings, and also make new or additional factual findings.

(b) Once the board has either determined that the factual findings of the CSRB hearing officer are reasonable and rational or has corrected the factual findings based upon the evidentiary/step 5 record as a whole, the board must then determine whether the CSRB hearing officer has correctly applied the relevant policies, rules, and statutes according to the correctness standard, with no deference being granted to the evidentiary/step 5 decision of the CSRB hearing officer.

(c) Finally, the board must determine whether the decision of the CSRB hearing officer, including the totality of the sanctions imposed by the agency, is reasonable and rational based upon the ultimate factual findings and correct application of relevant policies, rules, and statutes determined according to the above provisions.

(5) Appeal Hearing Record. The proceeding before the board shall be recorded by a certified court reporter, or in exceptional circumstances by a recording machine.

(6) Appellate Review. Upon a party's application for review of the CSRB hearing officer's evidentiary/step 5 decision, the board's appellate/step 6 decision is based upon a review of the record, including briefs and oral arguments presented at step 6, and no further evidentiary hearing will be held unless otherwise ordered by the board. Section 63-46b-10 of the UAPA is incorporated by reference.

(7) Remand. Until the board's decision is final, the board may remand the case to the original CSRB hearing officer to take additional evidence or to resolve any further evidentiary issues of fact or law with instructions or may make any other appropriate disposition of the appeal.

(8) Distribution of Appellate Decisions. The board's decision and order is issued on the date that it is signed and dated by the CSRB chair, vice-chair or another board member. After the board's appellate/step 6 decision is issued, it is distributed according to R137-1-8(3).

(a) The board's appellate decision shall be distributed to the aggrieved employee, the employee's counsel or representative, the appropriate agency official, the agency's counsel or representative, and to the agency's management representative. The board's appellate decision shall be final in terms of administrative review under these grievance procedures. The board may, at its discretion, release to the parties its determination orally prior to issuance of its official written decision.

(b) The board's appellate decision is binding on the agency that is a party to the appeal unless its decision and ruling is overturned, vacated, or modified resulting from an appeal to the Utah Court of Appeals.

(c) The board may affirm, reverse, adopt, modify, supplement, amend, or vacate the CSRB hearing officer's decision, either in whole or in part.

(9) Rehearings. The board does not permit rehearings.

(10) Reconsideration.

(a) Reconsideration requests of the board's appellate/step 6 decisions will be conducted pursuant to the provisions of Section 63-46b-13.

(b) Any request for reconsideration of a previously issued decision by the board is subject to the following conditions:

(i) Reconsideration requests must contain specific reasons why a reconsideration is warranted with respect to the board's factual findings and legal conclusions.

(ii) The board has discretion to decide whether it may reconsider any previously adjudicated matter.

(iii) The board only grants a reconsideration if appropriate justification is offered.

(iv) When the board agrees to the petitioner's request, the board's reconsideration response is in writing, with no further hearing or proceeding on the record, unless the board reopens the record or remands the case to the evidentiary/step 5 level.

(v) Any appeal from a board-issued reconsideration to the Utah Court of Appeals must be filed according to Section 63-46b-14(3)(a)of the UAPA.

(11) An Appeal to the Utah Court of Appeals.

To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the board's decision and final agency action according to Sections 63-46b-14 and 63-46b-16 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(12) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the appellate/step 6 proceeding. The CSRB Office may not share any cost for a transcript or transcription of the appeal hearing. The petitioning party should provide a copy of the appeal hearing's transcript to the responding party when an appellate/step 6 proceeding is transcribed.

R137-1-23. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the board or a CSRB hearing officer. Section 63-46b-21 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the CSRB Office or the administrator.

(b) The petition shall be date-stamped upon receipt in the CSRB Office.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, decision or order to be reviewed;

(c) describe the circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) include an address and telephone number where the petitioner can be reached during regular work days; and

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator or the board:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the board, in its judgment, deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The board or the administrator shall prepare the declaratory ruling without unnecessary delay. The board shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the board must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRB Office shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The board or the administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the board.

KEY: grievance procedures

December 16, 1997	**34A-5-106**
Notice of Continuation August 4, 2006	**67-19-30**
	67-19-31
	67-19-32
	67-19a et seq.
	63-46b et seq.

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rules.
R156-22-101. Title.

These rules are known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rules".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or these rules:

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and these rules means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is in an area where the licensee has demonstrated competence by adequate education, training and experience;

(c) arises from, and is directly related to, work performed in the licensed profession;

(d) is substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; and

(e) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1).

(6) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time engineering experience under supervision of one or more licensed engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE).

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time engineering experience under supervision of one or more licensed engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Engineering Credentials Evaluation International (ECEI) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(7) "Responsible charge" by a principal as used in Subsection 58-22-102(7) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(8) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(9) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-502.

R156-22-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 22.

R156-22-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to a EAC/ABET accredited program by the Engineering Credentials Evaluation International. Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the division in collaboration with the board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 22 semester hours or 32 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

(i) boundary law;

(ii) writing legal descriptions;

(iii) public land survey system;

(iv) surveying field techniques; and

(b) the remainder of the 22 semester hours or 32 quarter hours may be made up of successful completion of courses from the following content areas:

(i) photogrammetry;

(ii) studies in land records or land record systems;

(iii) survey instrumentation;

(iv) global positioning systems;

(v) geodesy;

(vi) control systems;

(vii) land development;

(viii) drafting, not to exceed six semester hours or eight quarter hours;

(ix) algebra, geometry, trigonometry, not to exceed six semester hours or eight quarter hours;

(x) geographic information systems.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) Experience must be progressive on projects that are of increasing quality and requiring greater responsibility.

(b) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(c) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(d) Unless otherwise provided in Subsection (1)(e), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(e) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(f) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(g) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(h) In addition to the supervisor's docmentation, the applicant shall submit at least one verification of qualifying experience from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for.

(i) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(d) or other qualified person under Subsection (1)(e) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards an ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four years of full

time or equivalent part time qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(A) The qualifying experience must be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience obtained under the supervision of one or more licensed professional land surveyors who have provided supervision, which experience is certified by the licensed professional land surveyor supervisor and is in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of full time or equivalent part time qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Prior to January 1, 2007, applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)(i) shall document eight years of qualifying experience in land surveying.

(b) The four years of qualifying experience required in R156-22-302c(3)(a)(i)(A) and four of the eight years required in R156-22-302c(3)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

(A) operation of various instrumentation;

(B) review and understanding of plan and plat data;

(C) public land survey systems;

(D) calculations;

(E) traverse;

(F) staking procedures;

(G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

(A) drafting (includes computer plots and layout);

(B) reduction of notes and field survey data;

(C) research of public records;

(D) preparation and evaluation of legal descriptions; and

(E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(3)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES

except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed the qualifying experience requirements set forth in Subsection R156-22-302c(1), and have successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed the experience requirements set forth in Subsection R156-22-302c(2).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PLS examination, an applicant must have successfully completed the education and qualifying experience requirements set forth in Subsections R156-22-302b(2) and 302c(3).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on December 31 of each even numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

(7) A licensee who documents they are engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(8) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 24 hours of continuing education complying with these rules within two years prior to the date of application for reinstatement of licensure.

R156-22-305. Inactive Status.

(1) A person currently licensed and in good standing as a professional engineer, professional structural engineer or professional land surveyor may apply for a transfer of that license to inactive status if:

(a)(i) the licensee is at least 60 years of age;

(ii) the licensee is disabled; or

(iii) the division finds other good cause for believing that the licensee will not return to the practice as a professional engineer, professional structural engineer or professional land surveyor;

(b) the licensee makes application for transfer of status and registration and pays a registration fee determined by the department under Section 63-38-3.2; and

(c) the licensee, on application for transfer, certifies that he will not engage in the practice for which a license is required while on inactive status.

(2) Each inactive license shall be issued in accordance with the two-year renewal cycle established by Section R156-1-308a.

(3) Inactive status licensees may not engage in practice for which a license is required.

(4) Inactive status licensees are not required to fulfill the continuing professional education under these rules.

(5) Each inactive status licensee is responsible for renewing his inactive license according to division procedures.

(6) An inactive status licensee may reinstate his license to active status by:

(a) submitting an application in a form prescribed by the division;

(b) paying a fee determined by the department under Section 63-38-3.2; and

(c) showing evidence of having completed the continuing professional education requirement established in Subsection R156-22-304(9).

R156-22-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501, 58-1-501(1)(a) through (d), 58-22-501 and 58-22-503, unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $800

Second Offense: $1,600

(2) Engaging in, or representing oneself as engaged in the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $800

Second Offense: $1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $1,000

Second Offense: $2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $1,000

Second Offense: $2,000

(5) Knowingly permits any person to use his or her license except as permitted by law.

First Offense: $1,000

Second Offense: $2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-503(1)(i).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating

circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors, professional engineers

August 15, 2006	**58-22-101**
Notice of Continuation January 13, 2003	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-38b. State Construction Registry Rules.
R156-38b-101. Title.

These rules are known as the "State Construction Registry Rules".

R156-38b-102. Definitions.

In addition to the definitions in Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or these rules:

(1) "Alternate method or process" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate methods or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1-31(1)(d).

(5) "SCR" means the State Construction Registry established in Sections 38-1-27 and 38-1-30 through 38-1-37.

R156-38b-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Sections 38-1-27 and 38-1-30 through 38-1-37 to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Section 38-1-30(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

(1) establishing rules to implement the SCR;

(2) providing oversight of the design, operation, and maintenance of the SCR; and

(3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsection 38-1-30(3)(b), the duties, functions, and responsibilities of the designated agent include:

(1) designing, developing, hosting, operating, and maintaining the SCR;

(2) providing training, marketing, and technical support for the SCR;

(3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and

(4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance as required by Subsection 38-1-35(2)(b), which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of $5 Million.

R156-38b-401. Reliability, Availability and Security Standards.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The SCR shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. Provide a single reliable redundant power supply for entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain legitimate software licenses for all purchased software used for the SCR.

(7) System Monitoring. Provide continuous monitoring of SCR environment.

(8) System Support. Provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the SCR and be assigned a unique user ID and password to gain access to the SCR. The information gathered in the registration process shall be maintained in the SCR as the user profile. The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

(a) first and last name of the individual registering;

(b) entity name if the individual represents an entity, and any DBA name(s);

(c) individual's position or title if the individual represents an entity;

(d) mailing address;

(e) phone number;

(f) email address, if any;

(g) preferred method of submitting payment to the SCR, as defined in a pre-populated pick list.

(2) The SCR shall provide the ability for a user to view

and modify the user's profile.

(3) The SCR shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(4) The SCR shall pre-populate filings with any information available in the user's profile.

(5) The account will not be effective until the fee, established by the Division in collaboration with the designated agent, is received.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction trail of completed transactions by registered user.

R156-38b-501. Notices of Commencement.

(1) Content Requirements. The content of notices of commencement shall be in accordance with Subsection 38-1-31(2).

(2) Persons Who Must File Notices. In accordance with Subsections 38-1-31(1)(a) and (b), the following are required to file a notice of commencement:

(a) For a construction project where a building permit is issued, within 15 days after the issuance of the building permit, the local government entity issuing that building permit shall input the data and transmit the building permit information to the database electronically or by alternate method and such building permit information shall form the basis of a notice of commencement. The local government entity may not transfer this responsibility to the person who is issued or is to be issued the building permit.

(b) For a construction project where a building permit is not issued, within 15 days after commencement of physical construction work at the project site, the original contractor shall file a notice of commencement with the SCR.

(3) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-31(1)(c), an owner of a construction project or original contractor may but is not required to file a notice of commencement with the designated agent within the prescribed time set forth in Subsection 38-1-31(1)(a) or (b).

(b) The parties identified in R156-38b-501(3)(a) may authorize a third party to file a notice of commencement on its behalf, as established in Subsection 38-1-27(9).

(4) Methodology.

(a) Electronic notice of commencement filings shall be input into the SCR by the person making the filing and shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of commencement.

(b) Alternate method notice of commencement filings shall be in accordance with this Section and Section R156-38-505.

(c) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, a search of the SCR shall be performed for any existing notices of commencement and existing filed amendments before creating a new notice of commencement for a project.

(i) If an existing notice of commencement is identified the following procedures apply:

(A) For an electronic filing by the person attempting to file the new notice of commencement, the SCR shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing. The SCR shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(I) If a notice of commencement already exists for the project but the person attempting to file the notice of commencement believes the content of the filing is not accurate, the person shall be given the option of submitting amendments to the content of the notice. The SCR shall reflect the submission date of the amendments, but the filing date of the notice shall remain unchanged. If the person attempting to file the new notice of commencement believes the existing notice is accurate, the system shall permit the proposed new filing to be terminated.

(B) For an alternate method filing, input by the designated agent for the person filing the notice of commencement, the designated agent shall notify the person by electronic or alternate method as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement. In addition, the user will be notified that the notice of commencement will be added to the construction project as an amendment to the original filing in the SCR and the appropriate fee will be charged.

(ii) As part of the process described in Subsection R156-38b-501(4)(c)(i), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search. The purpose of this requirement is to enable the person to properly identify any existing notice of commencement before a new notice of commencement is created, to avoid duplicate notice of commencement filings.

(iii) If no existing notice of commencement is identified for the particular project, the SCR shall allow the person who submitted the filing to file a new notice of commencement.

(d) Creation of New Notices.

(i) A new notice of commencement shall not be accepted into the SCR until the SCR system has checked for an existing notice in accordance with the procedures outlined in Subsection R156-38b-501(4).

(ii) In accordance with Subsection 38-1-31(1)(d), when a new notice of commencement filing is accepted into the SCR, the SCR shall assign the project a unique project number that identifies the project and can be associated with all future notices of commencement, preliminary notices, notices of completion, and requests for notification applicable to the project.

(e) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed, amended or corrected a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(i) The SCR shall reflect the effective date of the merger.

(ii) The SCR shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(iii) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(f) Resolving Multiple or Inconsistent Property Descriptions.

(i) The person making a notice of commencement filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project.

(ii) Neither the division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the SCR is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the SCR allowing the person to make a successful

duplicate notice of commencement filing with a different description of the project.

R156-38b-502. Preliminary Notices.

(1) A person who wishes to file a preliminary notice may authorize a third party to file the notice on the person's behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Preliminary Notice shall be in accordance with Subsection 38-1-32(1)(d).

(3) Methodology.

(a) Electronic preliminary notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a preliminary notice. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for the accuracy, suitability or coherence of the data.

(b) Alternate method preliminary notice filings shall be in accordance with Section R156-38b-505.

(c) Preliminary notice filing submitted before notice of commencement filing.

(i) A preliminary notice for a project may not be filed until the project has an existing notice of commencement. A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed may either:

(A) file the notice of commencement as an interested party to enable the filing of the preliminary notice; or

(B) wait for the notice of commencement to be filed by someone else to enable the filing of his or her preliminary notice.

(i) A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed and who can identify the project, using the building permit number or other identifier adopted by the Division in collaboration with the designated agent, may request notification of the filing of a notice of commencement for the project.

(ii) A preliminary notice filing that is not accepted by the SCR because it is submitted before a notice of commencement has been filed shall be in accordance with Section R156-38b-507.

R156-38b-503. Notices of Completion.

(1) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-33(1)(a)(i), the owner, original contractor, lender, title company or surety associated with the construction project may file a notice of completion.

(b) The parties identified in R156-38b-503(1)(a)(i) may authorize a third party to file the notice on its behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Notice of Completion shall be in accordance with Section 38-1-33(1)(d).

(3) Methodology.

(a) Electronic notice of completion filings shall be input into the SCR input screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of completion. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for validating the accuracy, suitability or coherence of the data.

(b) Alternate method notice of completion filings shall be in accordance with Section R156-38b-505.

R156-38b-504. Required Notifications and Requests for Notifications.

(1) Required Notifications. The designated agent or the SCR shall send the following required notifications:

(a) notification of the filing of a notice of commencement to a person who has filed a notice of commencement for the project, as required by Subsection 38-1-31(4)(a);

(b) notification of the filing of a preliminary notice to the person who filed the preliminary notice, as required by Subsection 38-1-32(2)(a)(i);

(c) notification of the filing of a preliminary notice to each person who filed a notice of commencement for the project, as required by Subsection 38-1-32(2)(a)(ii);

(d) notification of the filing of a notice of completion to each person who filed a notice of commencement for the project, as required by Subsection 38-1-33(1)(d)(i)(A); and

(e) notification of the filing of a notice of completion to each person who filed a preliminary notice for the project, as required by Subsection 38-1-33(d)(d)(i)(B).

(2) Permissible Requests for Notifications. The following requests for notifications may be submitted to the SCR:

(a) requests by any interested person who requests notification of the filing of a notice of commencement for a project, as permitted by Subsection 38-1-31(4)(b);

(b) requests by any interested person who requests notification of the filing of a preliminary notice, as permitted by Subsection 38-1-32(2)(a)(iii); and

(c) requests by any interested person who requests notification of the filing of a notice of completion, as permitted by Subsection 38-1-33(1)(d)(i)(C).

(3) Content Requirements for Requests for Notification. The content of a request for notification shall include:

(i) identification of the project by a method designated by the Division in collaboration with the designated agent;

(ii) name of the requestor;

(iii) the filing for which notification is requested; and

(iv) an electronic or alternate method address or telefax number for a response.

(4) Methodology.

(a) Automatic Response System. The SCR shall, to the extent practicable, be designed to require or generate the necessary information to support an automatic response system and documentation of automatic response system in order to handle requests for and required sending of notifications.

(b) Necessary Information. The information to be required from filers or generated to enable an automatic response system and documentation of response system shall include:

(i) the date requests for notification were accepted;

(ii) the method by which requests for notification are to be sent;

(iii) unique identification of the construction project;

(iv) the date a notification is sent in response to a requests for notification; and

(v) the mailing address, electronic mail address, or telefax number used to respond to a request for notification.

(c) Electronic Requests. Electronic requests shall be responded to electronically unless directed otherwise by the person filing the request.

(d) Alternate Method or Process Requests. Alternate method requests shall be responded to in the method requested by the requestor.

R156-38b-505. Alternate Filings.

(1) Alternate Methods of Filing. The alternate methods of filing are those established by Subsections 38-1-27(2)(e)(ii), i.e., U.S. Mail and telefax. Private commercial courier is established as an additional alternate method of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate method filings shall be the same as for electronic filings as set forth for Notices of Commencement, Preliminary Notices, and Notices of Completion in Sections 38-1-31, 38-1-32, and 38-1-33, respectively, or these rules.

(3) Format Requirements. Alternate method filings shall be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate method filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate method filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate method filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) The designated agent shall meet or exceed the following data entry standards for alternate filings:

(i) a primary operator shall manually input information required by Subsection 38-1-31(2)(a);

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate filing; and

(v) these standards are to be met prior to Internet publication.

R156-38b-506. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the SCR accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate method filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-507. Status of and Process for Filings Not Accepted by the SCR.

(1) A filing that is not accepted by the SCR shall not be considered to be filed.

(2) The SCR shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The SCR shall allow the person making the electronic filing attempt to correct the defect or defects, if possible.

(3) The designated agent shall notify a person whose alternate method filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate process that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the SCR shall maintain a record of all processing fees received with filings submitted by alternate process that are not accepted.

R156-38b-508. Correction of Filings.

(1) A person who submits a filing may submit a correction of the filing electronically or by alternate filing.

(2) A correction of filing shall not require a new fee payment unless submitted by alternate process or by a method of electronic process that requires manual input by the designated agent.

(3) A correction of filing shall not affect the date of filing for the filing being corrected. The date of filing for the correction of filing shall be as specified in Section R156-38b-506.

(4) Notification of the correction of filing shall be provided to the same persons as required for the filing being corrected.

R156-38b-509. Cancellation of Filings.

(1) In accordance with Subsections 38-1-32(3) and 38-1-33(2), the SCR shall, upon request of a person who filed an accepted preliminary notice or notice of completion, allow:

(i) a person who completed a filing who electronically requests cancellation of the filing to designate the filing as canceled; and

(ii) a person who completed a filing who by alternate process requests cancellation of the filing to have the filing placed in a canceled by the designated agent.

(2) Notification of the cancellation of a filing shall be provided to the same persons as required for the original successful filing.

(3) A canceled filing shall indicate that the filing is no longer given effect.

(4) A canceled filing may not be restored, but must be filed as a new filing in accordance with Sections 38-1-32 or 38-1-33.

R156-38b-510. Data Contained in the SCR.

The SCR is intended as a public repository of the information contained in the filings required or permitted by law. The SCR has the responsibility to post but not validate the accuracy, suitability or coherence of the information received in filings included within the SCR.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate method filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(i) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(ii) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the

registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1-27(2)(g), the SCR shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the SCR;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) It shall be the responsibility of the person making an electronic filing to print out a transaction receipt, if the person wishes a hard copy of the receipt.

(3) The designated agent shall send a transaction receipt to a person who submits a filing by alternate method that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall be responsible for keeping accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall be responsible for conducting or contracting for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-701. Indexing of State Construction Registry.

The SCR shall be indexed in accordance with Subsection 38-1-27(3)(b).

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1-30(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1-30(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is canceled under Subsection 38-1-32(3)(c) or 38-1-33(2)(c).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsections 38-1-27(2) and (3), and 38-1-30(3), construction projects in the SCR shall be accessible to an interested person who has registered with the SCR and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion
August 22, 2006 38-1-30(3)

R156. Commerce, Occupational and Professional Licensing.
R156-53. Landscape Architects Licensing Act Rules.
R156-53-101. Title.

These rules are known as the "Landscape Architects Licensing Act Rules".

R156-53-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 53, as used in Title 58, Chapters 1 and 53 or these rules:

(1) "Employee" or "employee, subordinate, associate, or drafter" of a landscape architect, as used in Subsections 58-53-102(5) and 58-53-603(2) and these rules, means one or more individuals not licensed as a landscape architect who are working for, with, or providing landscape architect services under the supervision or direction of the licensed landscape architect.

(2) "Under the direction of the landscape architect" or "under the supervision of a licensee", as used in Subsection 58-53-102(5) and 58-53-603(2), means that the unlicensed employee, subordinate, associate, or drafter of the landscape architect engages in the practice of landscape architecture only on work initiated by the landscape architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the landscape architect.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 53 is further defined, in accordance with Subsections 58-1-203(5) and 58-53-102(7), in Section R156-53-401.

R156-53-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 53.

R156-53-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-53-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsections 58-53-302(1)(d)(i) and (ii), an applicant for licensure shall complete the following education or experience requirements:

(a) the bachelors or masters degree in landscape architecture shall be from a curriculum accredited by the Landscape Architectural Accreditation Board (LAAB); or

(b) the eight years of experience shall be full or part time employment for periods of time not less than ten weeks in length under the supervision of one or more licensed landscape architects.

(2) Current certification with the Council of Landscape Architectural Registration Boards (CLARB) is evidence of having completed the education and experience requirements set forth in Subsections (1)(a) and (b).

R156-53-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-53-302(1)(e), an applicant for licensure shall pass the following examinations:

(1) the Landscape Architect Registration Examination (LARE) of the Council of Landscape Architectural Registration Boards; or

(2) the Uniform National Exam for Landscape Architects (UNE) of the Council of Landscape Architectural Registration Boards; and

(3) as part of the application for licensure, pass all questions on the open book, take home Utah Law and Rule Examination.

R156-53-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 53 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-53-401. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final site plan to a client, when the licensee represents, or could reasonably expect the client to consider, the site plan to be complete and final;

(2) submitting an incomplete final site plan to a building official for the purpose of obtaining a building permit; or

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter.

R156-53-501. Administrative Penalties - Unlawful Conduct.

In accordance with Sections 58-1-501 and 58-53-501 and Subsection 58-1-501(1)(a) through (d), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $800

Second Offense: $1,600

(2) Engaging in, or representing oneself as engaged in the practice of landscape architecture as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $800

Second Offense: $1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $1,000

Second Offense: $2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $1,000

Second Offense: $2,000

(5) Knowingly permitting any person to use his license except as permitted by law.

First Offense: $1,000

Second Offense: $2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount with a maximum amount not to exceed the maximum fine allowed under Subsection 58-53-502(1)(i)(iii).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-53-601. Landscape Architect Seal - Requirements.

In accordance with Section 58-53-601, all final site plans prepared by the licensee or prepared under the supervision or direction of the licensee, shall be sealed in accordance with the following:

(1) Each seal shall be a circular seal, 1 1/2 inches minimum diameter.

(2) Each seal shall include the licensee's name, license number, "State of Utah", and "Licensed Landscape Architect".

(3) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(4) Each original set of final site plans, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(5) A seal may be a wet stamp, embossed, or electronically produced.

(6) Copies of the original set of site plans which contain the original seal, original signature and date is permitted if the seal, signature and date is clearly recognizable.

KEY: landscape architects, licensing
August 15, 2006 **58-1-106(1)(a)**
Notice of Continuation June 2, 2003 **58-1-202(1)(a)**
58-53-101

R156. Commerce, Occupational and Professional Licensing.
R156-63. Security Personnel Licensing Act Rules.
R156-63-101. Title.

These rules are known as the "Security Personnel Licensing Act Rules."

R156-63-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or these rules:

(1) "Approved basic education and training programs" as used in these rules means basic education and training that meets the standards set forth in Sections R156-63-602 and R156-63-603 and that is approved by the division.

(2) "Approved basic firearms education and training program", as used in these rules means basic firearms education and training that meets the standards set forth in Section R156-63-604 and that is approved by the Division.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6-1(3).

(4) "Contract security company" includes:

(a) a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed, or for other than the regular salary, whether at regular pay or overtime pay, from the law enforcement agency by whom he is employed; but does not include:

(b) a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of the that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(6) "Immediate supervision" means the supervisor is available for immediate voice communication and can be available for in-person consultation within a reasonable period of time with an on-the-job trainee.

(7) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63-302a(1)(b) means a manager, director, or administrator of a contract security company.

(8) "Practical experience" means experience as an unarmed or armed private security officer obtained under the immediate supervision of a supervisor who has been assigned to train and develop the unarmed or armed private security officer.

(9) "Qualified continuing education" as used in these rules means continuing education that meets the standards set forth in Subsection R156-63-304.

(10) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(11) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(12) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the immediate supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(13) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-63-502.

R156-63-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 63.

R156-63-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-63-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(3) An application for licensure as an unarmed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(4) An applicant for licensure as an armed private security officer, unarmed private security officer, or as a qualifying agent for a contract security company by a person currently licensed under Title 58, Chapter 63, shall submit an application for change in license classification and shall be required to only document compliance with those requirements for licensure which have not been previously met in obtaining the currently held license.

R156-63-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) each applicant for licensure as an armed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603 and R156-63-604; and

(2) each applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603.

R156-63-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) the qualifying agent for each applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Security Personnel Qualifying Agent's Examination; and

(2) each applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 75% on the basic education and training final examination approved by the division and offered by each provider of basic education and training as a part of the program.

R156-63-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established as follows.

(1) An applicant shall file with the division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;
(b) assault and battery;
(c) personal injury;
(d) false arrest;
(e) libel and slander;
(f) invasion of privacy;
(g) broad form property damage;
(h) damage to property in the care, custody or control of the contract security company; and
(i) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the division during normal working hours.

(5) All contract security companies shall notify the division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsection 76-10-509(1).

R156-63-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
(b) theft, including retail theft, as defined in Title 76;
(c) larceny;
(d) sex offenses as defined in Title 76, Part 4;
(e) any offense involving controlled dangerous substances;
(f) fraud;
(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography; and
(u) any attempt to commit any of the above offenses.

(2) Applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis, including a consideration of the following:

(a) the duties violated;
(b) the potential or actual injury caused by the applicant's unprofessional conduct; and
(c) the existence of aggravating or mitigating factors.

R156-63-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 63 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-63-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Qualified continuing education for armed private security officers and unarmed private security officers shall consist of not less than 16 hours of formal classroom education or practical experience every two years.

(3) Continuing firearms education and training for armed private security officers shall consist of a minimum of four hours of firearms training every six months. Firearms education and training shall comply with the provisions of Public Law 103-54, the Armored Car Industry Reciprocity Act of 1993.

(4) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(5) Continuing education to qualify under the provisions of Subsection (2) shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) legal powers and limitations of private security officers;

(d) observation and reporting techniques;

(e) ethics; and

(f) emergency techniques.

R156-63-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(7) and 58-1-308(3)(b), there is created a demonstration of a clear criminal history as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer, unarmed private security officer, and for the qualifying agent for a contract security company.

(2) Each application for renewal or reinstatement of the license of a contract security company shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety, for the licensee's qualifying agent.

(3) Each application for renewal or reinstatement of the license of an armed private security officer, or unarmed private security officer shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety.

R156-63-306. Change of Qualifying Agent.

Within 30 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the division an application for change of qualifier on forms provided by the division, accompanied by a fee established in accordance with Section 63-38-3.2.

R156-63-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer is exempt from licensure and may engage in practice as an unarmed or armed private security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the division upon the application.

(2) Upon receipt of a complete application for licensure as an unarmed private security officer or as an armed private security officer, an on-the-job training letter may be issued to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an unarmed or as an armed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history re port from the Bureau of Criminal Identification showing "No Criminal Record Found";

(c) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

R156-63-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employment of an unarmed or armed private security office by a contract security company, as an on-the-job trainee pursuant to Section R156-63-307, who has been convicted of a felony or a misdemeanor crime of moral turpitude;

(3) employment of an unarmed or armed private security officer by a contract security company who fails to meet the requirements of Section R156-63-307; and

(4) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or an individual has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction is withheld.

(5) utilizing a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6-1(3) and Section 41-6-1.5 and in Title R722, Chapter 340;

(6) utilizing a vehicle with an emergency lighting system which violates the requirements of Section 41-6-140 of the Utah Motor Vehicle Code;

(7) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(8) incompetence or negligence by an unarmed private security officer, an armed private security officer or by a contract security company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(9) failure by the contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;

(10) failing to immediately notify the division of the cancellation of the contract security company's insurance policy

(11) failure of the contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63-613.

R156-63-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Contract Security Company	Armed or Unarmed Security Officer
58-63-501(1)	$ 800.00	N/A
58-63-501(3)	$ 800.00	$ 500.00

SECOND OFFENSE

58-63-501(1)	$1,600.00	$1,000.00
58-63-501(3)	$1,600.00	$1,000.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63-603.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) There shall be a written education and training manual which includes performance objectives.

(2) The program for armed private security officers shall provide content as established in Sections R156-63-603 and R156-63-604 of these rules.

(3) The program for unarmed private security officers shall provide content as established in Section R156-63-603 of these rules.

(4) All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

R156-63-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

An approved basic education and training program for armed and unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of a private security officer and the private security officer's role in today's society;

(b) state laws and rules applicable to private security;

(c) legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(d) situational response evaluations, including protecting and securing crime or accident scenes, notification of intern and external agencies, and controlling information;

(e) ethics;

(f) use of force, emphasizing the de-escalation of force and alternatives to using force;

(g) report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(h) patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, and monitoring potential safety hazards;

(i) police and community relations, including fundamental duties and personal appearance of security officers;

(j) sexual harassment in the work place; and

(k) a final examination which competently examines the student in the subjects included in the approved program of education and training and which the student passes with a minimum score of 80%.

R156-63-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

An approved basic firearms training program for armed private security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) the care and cleaning of the weapon;

(c) no alterations of firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions

of Title 76, Chapter 2, Part 4 and a discussion of 18 CFR 44 Section 922;

(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time will the weapon be drawn as a threat or means to force compliance with any verbal directive not involving eminent threat to life; and

(2) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".

(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:

(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and

(b) the word "Security", "Contract Security", or "Security Officer".

(5) Contract security companies shall have until July 1, 2005 to ensure that all uniforms comply with the requirements of this section. Thereafter, all uniforms, soft and regular, must meet all requirements established in this section.

R156-63-606. Operating Standards - Badges.

Badges may be worn under the following conditions:

(1) they do not carry the seal of the state of Utah nor have the words "State of Utah";

(2) they shall contain the word "Security" and may contain the name of the company; and

(3) the use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

In the event an officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company is found guilty of a felony, or of a misdemeanor which impacts upon that individual's ability to function within the security industry, said company shall within ten days reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that they are connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver license whenever he is performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63-610. Operating Standards - Vehicles.

(1) No contract security company or its personnel shall utilize a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle pursuant to Subsection 41-6-1(3).

(2) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than 4 inches in height and in a color contrasting with the color of the contract security company vehicle.

(3) Contract security companies shall have six months from the effective date of this rule to ensure that all vehicles comply with the requirements of this section.

(4) Subsection R156-63-610(2) does not apply to armored cars as defined in the Armored Car Industry Reciprocity Act of 1993.

R156-63-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers; and
(r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the division upon request.

R156-63-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed

prominently in all branch offices.

R156-63-613. Operating Standards - Standards of Conduct.

All armed and unarmed private security officers licensed pursuant to Title 58, Chapter 63 if arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor, shall within 72 hours notify the contract security company they are employed with of the criminal offense. The contract security company shall notify the Division of the criminal offense within 72 hours of notification by the licensee, in writing, including name, name of the arresting agency, the agency case number and the nature of the criminal offense.

KEY: licensing, security guards, private security officers

August 15, 2006	**58-1-106(1)(a)**
Notice of Continuation September 1, 2005	**58-1-202(1)(a)**
	58-63-101

R156. Commerce, Occupational and Professional Licensing.
R156-69. Dentist and Dental Hygienist Practice Act Rules.
R156-69-101. Title.

These rules are known as the "Dentist and Dental Hygienist Practice Act Rules."

R156-69-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 69, as used in Title 58, Chapters 1 and 69 or these rules:

(1) "ACLS" means Advanced Cardiac Life Support.

(2) "ADA" means the American Dental Association.

(3) "ADA CERP" means American Dental Association Continuing Education Recognition Program.

(4) "BCLS" means Basic Cardiac Life Support.

(5) "ADHA" means the American Dental Hygienists' Association.

(6) "CPR" means cardiopulmonary resuscitation.

(7) "CRDTS" means the Central Regional Dental Testing Service, Inc.

(8) "Competency" means displaying special skill or knowledge derived from training and experience.

(9) "Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.

(10) "DANB" means the Dental Assisting National Board, Inc.

(11) "Deep sedation" means a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including inability to respond purposefully to verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

(12) "General anesthesia" means a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method or a combination thereof.

(13) "NERB" means Northeast Regional Board of Dental Examiners, Inc.

(14) "SRTA" means Southern Regional Testing Agency, Inc.

(15) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 69, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-69-502.

(16) "UDA" means Utah Dental Association.

(17) "UDHA" means Utah Dental Hygienists' Association.

(18) "WREB" means the Western Regional Examining Board.

R156-69-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 69.

R156-69-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-69-201. Classifications of Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(a), a dentist may be issued an anesthesia and analgesia permit in the following classifications:

(1) class I permit;

(2) class II permit;

(3) class III permit; and

(4) class IV permit.

R156-69-202. Qualifications for Anesthesia and Analgesia Permits - Dentist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for anesthesia and analgesia permits are:

(1) for a class I permit:

(a) current licensure as a dentist in Utah; and

(b) documentation of current CPR or BCLS certification;

(2) for a class II permit:

(a) current licensure as a dentist in Utah;

(b) documentation of current BCLS certification;

(c) evidence of having successfully completed training in the administration of nitrous oxide conscious sedation which conforms to the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Parts I, II, or III, of the American Dental Association, July 1993, which is incorporated by reference; and

(d) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(2);

(3) for a class III permit:

(a) compliance with Subsections (1)(a) and (2) above;

(b) evidence of current Advanced Cardiac Life Support (ACLS) certification;

(c) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) Registration in good standing;

(d) evidence of having successfully completed comprehensive predoctoral or post doctoral training in the administration of parenteral conscious sedation which conforms to the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part III, of the American Dental Association, July 1993, and a letter from the course director documenting competency in performing parenteral conscious sedation; and 60 hours of didactic education in sedation and successful completion of 20 cases; and

(e) certification that the applicant will comply the scope of practice as set forth in Subsection R156-69-601(3); and

(4) for a class IV permit:

(a) compliance with Subsections (1), (2), and (3) above;

(b) evidence of current ACLS certification;

(c) evidence of having successfully completed advanced training in the administration of general anesthesia and deep sedation consisting of not less than one year in a program which conforms to the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part II, of the American Dental Association, July 1993, and a letter from the course director documenting competency in performing general anesthesia and deep sedation;

(d) documentation of successful completion of advanced training in obtaining a health history, performing a physical examination and diagnosis of a patient consistent with the administration of general anesthesia or deep sedation; and

(e) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(4).

R156-69-203. Classification of Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(a), a dental hygienist may be issued an anesthesia and analgesia permit in the classification of local anesthesia.

R156-69-204. Qualifications for Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for a local anesthesia permit are the following:

(1) current Utah licensure as a dental hygienist or documentation of meeting all requirements for licensure as a

dental hygienist;

(2) successful completion of a program of training in the administration of local anesthetics accredited by the Commission on Dental Accreditation of the ADA; and

(3) passing score on the WREB examination in anesthesiology; or

(4) documentation of having a current, active license to administer local anesthesia in another state in the United States.

R156-69-302a. Qualifications for Licensure - Education Requirements for Graduates of Dental or Dental Hygiene Schools Located Outside the United States.

The satisfactory documentation of compliance with the licensure requirement set forth in Subsections 58-69-302(1)(d)(ii) and 58-69-302(3)(d)(ii) shall be a report submitted to the division by the International Credentialing Associates, Inc. confirming that the applicant's dental school or dental hygiene school has met the accreditation standards.

R156-69-302b. Qualifications for Licensure - Examination Requirements - Dentist.

In accordance with Subsections 58-69-302(1)(f) and (g), the examination requirements for licensure as a dentist are established as the following:

(1) the WREB examination with a passing score as established by the WREB;

(2) the NERB examination with a passing score as established by the NERB;

(3) the SRTA examination with a passing score as established by the SRTA; or

(4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-302c. Qualifications for Licensure - Examination Requirements - Dental Hygienist.

In accordance with Subsections 58-69-302(3)(f) and (g), the examination requirements for licensure as a dental hygienist are established as the following:

(1) the WREB examination with a passing score as established by the WREB;

(2) the NERB examination with a passing score as established by the NERB;

(3) the SRTA examination with a passing score as established by the SRTA; or

(4) the CRDTS examination with a passing score as established by the CRDTS.

R156-69-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 69, is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-69-304a. Continuing Education - Dentist and Dental Hygienist.

In accordance with Section 58-69-304, qualified continuing professional education requirements are established as the following:

(1) All licensed dentists and dental hygienists shall complete 30 hours of qualified continuing professional education during each two year period of licensure.

(2) Qualified continuing professional education hours for licensees who have not been licensed for the entire two year period will be prorated from the date of licensure.

(3) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(4) Qualified continuing professional education shall consist of clinically oriented institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning.

(5)

(a) Qualified continuing professional education shall be approved by the Academy of General Dentistry or ADA CERP; or

(b) sponsored or presented by the ADA or any subgroup thereof, the ADHA or any subgroup thereof, an accredited dental, dental hygiene, or dental postgraduate program, a government agency, a recognized dental or health care professional association, or a peer study club.

(6) Qualified continuing professional education does not include courses in practice management.

(7) Any licensee with a class III or IV anesthesia permit must complete at least 15 hours of continuing education related to parenteral anesthesia every two years. These 15 hours may be part of the 30 hours required in Subsection (1).

R156-69-502. Unprofessional Conduct.

"Unprofessional Conduct" includes the following:

(1) failing to provide continuous in-operatory observation by a trained dental patient care staff member for any patient under nitrous oxide administration;

(2) advertising or being listed under a specialty heading when having not completed an ADA accredited educational program beyond the dental degree in one or more recognized areas: dental public health, endodontics, oral pathology, oral and maxillofacial surgery, orthodontics, pediatric dentistry, periodontics and prosthodontics;

(3) engaging in practice as a dentist or dental hygienist without prominently displaying a copy of the current Utah license;

(4) failing to personally maintain current CPR or BCLS certification, or employing patient care staff who fail to maintain current CPR or BCLS certification;

(5) providing consulting or other dental services under anonymity;

(6) engaging in unethical or illegal billing practices or fraud, including:

(a) reporting an incorrect treatment date for the purpose of obtaining payment;

(b) reporting charges for services not rendered;

(c) incorrectly reporting services rendered for the purpose of obtaining payment;

(d) generally representing a charge to a third party that is different from that charged the patient; and

(7) failing to establish and maintain appropriate records of treatment rendered to all patients for a period of seven years.

R156-69-601. Scope of Practice - Anesthesia and Analgesia Permits.

In accordance with Subsection 58-69-301(4)(a), the scope of practice permitted under each classification of anesthesia and analgesia permit includes the following:

(1) A dentist with a class I permit:

(a) may administer or supervise the administration of any legal form of non-drug induced conscious sedation or drug induced conscious sedation except:

(i) that which employs the administration of inhalation agents including nitrous oxide; and

(ii) the administration of any drug for sedation by any parenteral route; and

(b) shall maintain and ensure that all patient care staff

maintain current CPR certification.

(2) A dentist with a class II permit:

(a) may administer or supervise the administration of nitrous oxide induced conscious sedation in addition to the privileges granted one holding a Class I permit; and

(b) shall ensure that:

(i) every patient under nitrous oxide administration is under continuous in-operatory observation by a member of the dental patient care staff;

(ii) nitrous oxide and oxygen flow rates and sedation duration and clearing times are appropriately documented in patient records;

(iii) reasonable and prudent controls are in place and followed in regard to nitrous oxide to ensure the health and safety of patients, dental office personnel, and the general public;

(iv) the dental facility is equipped with adequate and appropriate equipment, in good working order, to assess vital signs; and

(v) equipment used in the administration of nitrous oxide has a scavenging system and that all gas delivery units have an oxygen fail-safe system.

(3) A dentist with a class III permit:

(a) may administer or supervise the administration of parenteral conscious sedation in addition to the privileges granted one holding a Class I and Class II permit; and

(b) shall ensure that:

(i) the dental facility has adequate and appropriate monitoring equipment, including pulse oximetry, current emergency drugs, and equipment capable of delivering oxygen under positive pressure;

(ii) the patient's heart rate, blood pressure, respirations and responsiveness are checked at specific intervals during the anesthesia and recovery period and that these observations are appropriately recorded in the patient record;

(iii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, and resuscitation medications;

(iv) the above equipment is inspected annually by a certified technician and is calibrated and in good working order;

(v) inhalation agents' flow rates and sedation duration and clearing times are appropriately documented in patient records; and

(vi) a minimum of two persons, with one person constantly monitoring the patient, are present during the administration of parenteral conscious sedation as follows:

(A) an operating permittee dentist and a BCLS certified assistant trained and qualified to monitor appropriate and required physiologic parameters;

(B) an operating dentist and a permittee dentist; or

(C) an operating permittee dentist and another licensed professional qualified to administer this class of anesthesia.

(4) A dentist with a class IV permit;

(a) may administer or supervise the administration of general anesthesia or deep sedation in addition to the privileges granted one holding a class I, II and III permit; and

(b) shall ensure that:

(i) the dental facility is equipped with precordial stethoscope for continuous monitoring of cardiac function and respiratory work, electrocardiographic monitoring and pulse oximetry, means of monitoring blood pressure, and temperature monitoring; the preceding or equivalent monitoring of the patient will be used for all patients during all general anesthesia or deep sedation procedures; in addition, temperature monitoring will be used for children;

(ii) the dental facility is equipped to treat emergencies providing immediate access to advanced airway equipment, resuscitation medications, and defibrillator;

(iii) the above equipment is inspected annually by a certified technician and is calibrated and in good working order; and

(iv) three qualified and appropriately trained individuals are present during the administration of general anesthesia or deep sedation as follows:

(A) an operating dentist holding a permit under this classification, an anesthesia assistant trained to observe and monitor the patient using the equipment required above, and an individual to assist the operating dentist;

(B) an operating dentist, an assistant to the dentist and a dentist holding a permit under this classification; or

(C) another licensed professional qualified to administer this class of anesthesia and an individual to assist the operating dentist.

(5) Any dentist administering any anesthesia to a patient which results in, either directly or indirectly, the death or adverse event resulting in hospitalization of a patient shall submit a complete report of the incident to the board within 30 days.

R156-69-602. Practice of Dental Hygiene.

In accordance with Subsection 58-69-102(7)(a)(ix), other practices of dental hygiene include performing laser bleaching.

R156-69-603. Use of Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803, the standards regulating the use of unlicensed individuals as dental assistants are that an unlicensed individual shall not, under any circumstance:

(1) render definitive treatment diagnosis;

(2) place, condense, carve, finish or polish restorative materials, or perform final cementation;

(3) cut hard or soft tissue or extract teeth;

(4) remove stains, deposits, or accretions, except as is incidental to polishing teeth coronally with a rubber cup;

(5) initially introduce nitrous oxide and oxygen to a patient for the purpose of establishing and recording a safe plane of analgesia for the patient, except under the direct supervision of a licensed dentist;

(6) remove bonded materials from the teeth with a rotary dental instrument or use any rotary dental instrument within the oral cavity except to polish teeth coronally with a rubber cup;

(7) take jaw registrations or oral impressions for supplying artificial teeth as substitutes for natural teeth, except for diagnostic or opposing models for the fabrication of temporary or provisional restorations or appliances;

(8) correct or attempt to correct the malposition or malocclusion of teeth, or make an adjustment that will result in the movement of teeth upon an appliance which is worn in the mouth;

(9) perform sub-gingival instrumentation;

(10) render decisions concerning the use of drugs, their dosage or prescription; or

(11) expose radiographs without meeting the following criteria:

(a) completing a dental assisting course accredited by the ADA Commission on Dental Accreditation; and

(b) passing one of the following examinations:

(i) the DANB Radiation Health and Safety Examination (RHS); or

(ii) a radiology exam approved by the board that meets the criteria established in Section R156-69-604.

R156-69-604. Radiology Course for Unlicensed Individuals as Dental Assistants.

In accordance with Section 58-69-803 and Subsection 58-54-4.3(2), the radiology course in Subsection R156-69-603(11) shall include radiology theory consisting of:

(1) orientation to radiation technology;
(2) terminology;
(3) radiographic dental anatomy and pathology (cursory);
(4) radiation physics (basic);
(5) radiation protection to patient and operator;
(6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;
(7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;
(8) intraoral and extraoral radiographic techniques;
(9) processing techniques including proper disposal of chemicals; and
(10) infection control in dental radiology.

KEY: licensing, dentists, dental hygienists
August 22, 2006 58-69-101
Notice of Continuation June 19, 2006 58-1-106(1)(a)
58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-209. Administrative Proceedings.
R162-209-1. Requests for Agency Action.

209.1.1 Any application form which is filled out and submitted to the Division for a license or renewal of a license, or for certification of a school, instructor, or course, shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63-46b-1, et seq.

209.1.2 A complaint against a licensee requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63-46b-1, et seq.

209.1.3 Other requests for agency action shall be in writing and signed by the requestor, and shall contain the information required by the Utah Administrative Procedures Act, Section 63-46b-3.

R162-209-2. Formal Adjudicative Proceedings.

Any adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted on a formal basis.

R162-209-3. Informal Adjudicative Proceedings.

209.3.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

209.3.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules.

209.3.3. All proceedings on original or renewal applications for a license will be conducted as informal adjudicative proceedings.

209.3.4. All proceedings on original or renewal applications for certification of a school, instructor, or course will be conducted as informal adjudicative proceedings.

209.3.5. Except as provided in Section 63-46b-20, all proceedings for disciplinary action commenced by the Division following investigation of a complaint will be conducted as informal adjudicative proceedings.

R162-209-4. Hearings Not Required.

A hearing is not required and will not be held in the following informal adjudicative proceedings:

(a) The issuance of an original or renewed license when the application has been approved by the Division;

(b) The issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the Division;

(c) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or 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;

(d) The denial of an application for original or renewed license on the ground that it is incomplete;

(e) The denial of an application for original or renewed school certification, instructor certification, or course certification on the ground that it does not comply with the requirements of Sections R162-208.9, R162-210.2, R162-210.5, or R162-210.6; or

(f) All proceedings on an application for an exemption from the continuing education requirement.

R162-209-5. Hearings Required in Informal Adjudicative Proceedings.

209.5.1 Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2c-402.

R162-209-6. Hearings Permitted.

209.6.1. Except as provided in Subsection 209.6.2, an informal post-revocation hearing following the revocation of a license pursuant to Utah Code Section 61-2c-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held if requested in writing by the person within 30 days from the date the Division's order revoking the license was mailed.

209.6.2 Upon a finding of good cause shown for a delay in requesting a hearing, the Director may grant a post-revocation hearing to a licensee whose request for a hearing was not timely made.

R162-209-7. Procedures for Hearing in All Informal Adjudicative Proceedings.

209.7.1 The procedures to be followed in all informal adjudicative proceedings are set forth in Title 63, Chapter 46b, Utah Administrative Procedures Act, Utah Administrative Code Section R151-46b, and in these rules.

209.7.2 Except as provided in Subsection 209.8.3 of these rules, a party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

209.7.3 Assistance of an Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge shall be in writing.

209.7.4. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for a license or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of date, time, and place scheduled for the hearing at least ten days prior to the hearing.

209.7.5. Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft documents, attorney/client communications, materials containing an attorney's work product, materials containing the investigators' thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information that it has already provided to that party.

209.7.6. Intervention. Intervention is prohibited.

209.7.7. Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63, Chapter 46b, the Utah Administrative Procedures Act, or Title 52, Chapter 4, the Open and Public Meetings Act.

209.7.8 Representation by Counsel. The respondent in a proceeding commenced by the Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

209.7.9. Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting them. The party who has

requested that a witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, the witness fee and mileage to be paid to the witness.

209.7.10. Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to a proceeding, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's recording of the proceedings.

209.7.11. Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting review. The order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly mailed or delivered to each of the parties.

R162-209-8. Additional Procedures for Disciplinary Proceedings Commenced by the Division.

209.8.1 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2c-402 following the investigation of a complaint by the Division:

209.8.2 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division.

209.8.3 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2c-402 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition.

209.8.4 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition.

209.8.4.1 Contents of Witness List. A Witness List shall contain the name, address, and telephone number of each witness, and a summary of the testimony expected from the witness.

209.8.4.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits.

209.8.5 Pre-hearing Motions. Any pre-hearing motion permitted by the Department of Commerce Administrative Procedures Act Rules shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions.

KEY: residential mortgage loan origination
August 29, 2006 63-46b-4
Notice of Continuation January 30, 2006

R251. Corrections, Administration.
R251-113. Distribution of Reimbursement for the Felony Probation Inmate Costs Reimbursement Program/Fund.
R251-113-1. Authority and Purpose.

(1) This rule is provided in accordance with Section 64-13c-301, et seq.

(2) As required by Subsection 64-13c-303(1)(b), the purpose of this rule is to establish procedures for the distribution of reimbursement from the program.

(3) As required by legislative intent language from the General Session 2004, Senate Bill SB-1, Jail Reimbursement, lines 322-334.

R251-113-2. Definitions.

In addition to terms defined in Section 64-13c-101,

(1) "Contract State Inmate" means an inmate who has been sentenced to the Utah Department of Corrections and at the pleasure of the Division of Institutional Operations (DIO) is selected to complete all or a portion of their court ordered incarceration in a county correctional facility under contract with the UDC.

(2) "Core inmate incarceration costs (Core Rate)" means the county correctional facility's jails direct costs of incarcerating an inmate, including housing, feeding, clothing, and programming. This is also the "single-reimbursement-rate" as provided in Section 64-13c-302. This does not include costs of inmate transportation services or medical care; nor programming for felony probationers.

(3) "Credit for Time Served" means time served in jail prior to judgement, sentence, and commitment.

(4) "Current expenses" means the actual costs of jail salaries, benefits, food, clothing, maintenance, and utilities expended during the most recent budget year.

(5) "Fund" means the monies allocated by the legislature for the Felony Probation Inmate costs (Inmate Costs Reimbursement Program for the current fiscal year.

(6) "Felony Probation Inmate" means a person who may serve a period of time, not to exceed one year in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate, as provided in 77-18-1-(8)(v) Felony Probationer.

(7) "Transportation cost" means mileage rate, salary and benefit costs of the transporting officer(s) expended during the most recent budget year.

R251-113-3. Reimbursement Rates - General.

Pursuant to Section 64-13c-302:

(1) the procedures for setting the rate will be followed as written in the statute; the meeting of the committee will take place prior to July 1 of each year and after the information is gathered from the counties.

(2) the Rate Setting Committee as outlined in 64-13c-302 shall negotiate a single reimbursement rate, applicable to all counties, which shall consist of daily core inmate incarceration costsand shall be called the "Core Rate";

(3) each county shall negotiate directly with the Department to establish appropriate reimbursement rates for the providing of transportation services and medical care for inmates housed under Section 64-13c-201, including Felony Probationers committed to a county jail;

(4) the three parts of the setting reimbursement rate are:

(a) the core rate;

(b) county medical costs; and

(c) county transportation costs.

R251-113-4. County Information Requirement.

(1) On or before the first Friday in March, each county shall provide the Department with budget expenditure information covering the most recent full County Fiscal Year ending on December 31st of each year:

(a) the full costs and expenses required to operate the jail for the current year;

(b) the cost of medical care provided to all inmates housed in the jail for the current year;

(c) the cost of transportation services provided during the current year; and

(d) the number of inmates and number of "inmate-days" for:

(i) the number of state-contract inmates;

(ii) the condition-of-probation inmates;

(iii) the number of all other county inmates, including all other inmates within the facility not already listed;

(iv) the number of federal inmates;

(v) the number of electronically monitored inmates; and

(vi) the number of total inmates.

(2) The Department may audit the information received by each county as necessary.

R251-113-5. Computation of Reimbursement Rates.

(1) A single core rate shall be used as the basis for all counties as the rate for cost-recovery of housing state inmates.

(a) It will be computed by taking a list of the total information received from all counties, categorized as total inmate days and total current expenses; and then taking

(b) total current expenses, which shall then be divided by the total inmate days, resulting in a computed core rate.

(c) This computed core rate shall be used as the single reimbursement rate for all counties housing contract state prison inmates during the year whether the inmate is a Contract State Inmate or Felony Probation Inmate.

(2) In addition, a separate county rate shall be calculated to reflect medical and transportation expenses incurred by each county. This separate county rate will be computed by:

(a) taking the total medical costs for each county and dividing that total by the inmate days of each county, minus any contract prisoner; and

(b) taking the total transportation cost for each county and dividing that total by the inmate days for each county minus any contract prisoners.

R251-113-6. Payment for Condition of Probation Inmates.

(1) The fund may reimburse each county at seventy percent of the core reimbursement rate established by the Rate Setting Committee and approved by the Legislature.

(2) If funds permit it is the intent of the Legislature for the Department to reimburse county rates related to transportation and/or medical care of felony probation inmates sentenced to a county jail from the fund up to the rate of seventy percent. The medical and transportation rate for each county may be calculated and reimbursed at different rates.

(3) "Credit for Time Served" is not eligible for reimbursement. Reimbursement can only be made beginning on the first day of incarceration after sentencing.

(4) Counties shall not be eligible for reimbursement for housing felony probation inmates who have been ordered by the court to reimburse the county for the cost associated with their incarceration.

R251-113-7. Notice of Fund Shortfall.

(1) Should it be projected that the appropriated fund will be spent prior to the end of the fiscal year, the Department shall notify the Legislative Fiscal Analyst Office in writing. The report will explain the factors used to determine the shortfall.

(2) The Department shall also notify each participating county jail that the fund will be short.

(3) If the fund falls short of being able to cover the core rate the department shall collect all billings against the fund and

hold until the end of the fiscal year. At that time, the remaining funds shall be dispersed at an equal percentage across all participating counties.

KEY: county jails, reimbursement
November 9, 2004 64-13-303
Notice of Continuation August 30, 2006

R277. Education, Administration.
R277-410. Accreditation of Schools.
R277-410-1. Definitions.

A. "Accreditation" means the formal process for evaluation and approval under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

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

C. "Elementary school" for the purpose of this rule means grades K-6 in whatever kind of school the grade levels exists.

D. "Middle school" for the purpose of this rule means grades 7-8 in whatever kind of school the grade levels exist.

E. "Northwest" means the Northwest Association of Accredited Schools, the regional accrediting association of which Utah is a member.

F. "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist.

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

R277-410-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(1)(c)(i) which directs the Board to adopt rules for school accreditation, 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 specify accreditation procedures and responsibility for public schools for which accreditation is required and for nonpublic schools which voluntarily request Northwest accreditation.

R277-410-3. Accreditation of Public Schools.

A. The USOE has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools.

B. Utah public secondary schools, as defined in R277-410-1F, including charter schools, shall be members of Northwest and be accredited by Northwest, except as exempted by R277-412-3C and R277-413-3K.

C. Utah public elementary and middle schools, as defined in R277-410-1C and D, including charter schools, that desire accreditation shall be members of Northwest and meet the requirements of R277-413. Northwest accreditation is optional for Utah elementary and middle schools.

D. All Northwest accredited schools shall complete the annual accreditation report and file the report in accordance with USOE procedures.

E. If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety.

R277-410-4. Transfer or Acceptance of Credit.

A. Utah public schools shall accept transfer credits from accredited secondary schools consistent with R277-705-3.

B. Utah public schools may accept transfer credits from other credit sources consistent with R277-705-3.

KEY: accreditation, public schools, nonpublic schools
August 8, 2006 Art X Sec 3
Notice of Continuation September 12, 200253A-1-402(1)(c)
53A-1-401(3)

R277. Education, Administration.
R277-459. Classroom Supplies Appropriation.
R277-459-1. Definitions.

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

B. "Classroom teacher" means a permanent teacher position filled by one or more teachers employed by a school district, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools and paid on the teachers' salary schedule or a charter school salary schedule. Teachers shall be employed for an entire contract period. The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools.

C. "Field trip" means a district, or school authorized excursion for educational purposes.

D. "Teaching supplies and materials" means both expendable and nonexpendable items that are used for educational purposes by teachers in classroom activities and may include such items as:

(1) paper, pencils, workbooks, notebooks, supplementary books and resources;

(2) laboratory supplies, e.g. photography materials, chemicals, paints, bulbs (both light and flower), thread, needles, bobbins, wood, glue, sandpaper, nails and automobile parts;

(3) laminating supplies, chart paper, art supplies, and mounting or framing materials;

(4) This definition should be broadly construed in so far as the materials are used by the teacher for instructional purposes in classrooms, lab settings, or in conjunction with field trips.

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

R277-459-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which gives general control and supervision of the public school system to the Board, by Section 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for school programs, and by state legislation which provides a designated appropriation for teacher classroom supplies and materials.

B. The purpose of this rule is to distribute money through school districts, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools to classroom teachers for school materials and supplies and field trips.

R277-459-3. Distribution of Funds.

A. Each school district, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools shall provide the USOE with a teacher count of full-time classroom teachers, as defined above, as of November 1 of each year.

B. The USOE shall distribute funds through each school district, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools proportionally per eligible position to the extent of the appropriation.

C. Individual teachers shall designate the uses for their allocations within the criteria of this rule. Districts and other eligible schools shall develop procedures and timelines to facilitate the intent of the appropriation.

D. Each school district shall ensure that each eligible individual has the opportunity to receive the proportionate share of the appropriation.

E. If a teacher has not spent or committed to spend the individual allocation by April 1, the school or district may make the excess funds available to other teachers or may reserve the money for use by teachers the following years.

F. These funds are to supplement, not supplant, existing funds for these purposes.

G. These funds are to be accounted for by the district or eligible school using state or district procurement and accounting policies.

R277-459-4. Other Provisions.

A. Districts, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools shall allow, but not require, teachers to jointly use their allocations.

B. Districts, the Utah Schools for the Deaf and the Blind, the Edith Bowen Laboratory School, and charter schools shall allow part-time or job-sharing teachers a proportionate allocation.

KEY: teachers, supplies
August 8, 2006 **Art X Sec 3**
Notice of Continuation July 6, 2005 **53A-1-402(1)(b)**

R277. Education, Administration.
R277-474. School Instruction and Human Sexuality.
R277-474-1. Definitions.

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

B. "Curriculum materials review committee (committee)" means a committee formed at the district or school level, as determined by the local board of education, that includes parents, health professionals, school health educators, and administrators, with at least as many parents as school employees. The membership of the committee shall be appointed and reviewed annually by August 1 of each year by the local board, shall meet on a regular basis as determined by the membership, shall select its own officers and shall be subject to Sections 52-4-1 through 52-4-10.

C. "Family Educational Rights and Privacy Act" is a state statute, Sections 53A-13-301 and 53A-13-302, that protects the privacy of students, their parents, and their families, and supports parental involvement in the public education of their children.

D. "Human sexuality instruction or instructional programs" means any course, unit, class, activity or presentation that provides instruction or information to students about sexual abstinence, human reproduction, reproductive anatomy, physiology, pregnancy, marriage, childbirth, parenthood, contraception, or HIV/AIDS and other sexually transmitted diseases. While these topics are most likely discussed in such courses as health education, health occupations, human biology, physiology, parenting, adult roles, psychology, sociology, child development, and biology, this rule applies to any course or class in which these topics are the focus of discussion.

E. "Inservice" means training in which Utah educators may participate to renew a license, receive information or training in a specific subject area, teach in another subject area or teach at another grade level.

F. "Instructional Materials Commission" means an advisory commission authorized under Section 53A-14-101.

G. "Medically accurate" means verified or supported by a body of research conducted in compliance with scientific methods and published in journals that have received peer-review, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the American Medical Association.

H. "Parental notification form" means a form developed by the USOE and used exclusively by Utah public school districts or Utah public schools for parental notification of subject matter identified in this rule. Students may not participate in human sexuality instruction or instructional programs as identified in R277-474-1D without prior affirmative parent/guardian response on file. The form:

(1) shall explain a parent's right to review proposed curriculum materials in a timely manner;

(2) shall request the parent's permission to instruct the parent's student in identified course material related to human sexuality;

(3) shall allow the parent to exempt the parent's student from attendance for class period(s) while identified course material related to human sexuality is presented and discussed;

(4) shall be specific enough to give parents fair notice of topics to be covered;

(5) shall include a brief explanation of the topics and materials to be presented and provide a time, place and contact person for review of the identified curricular materials;

(6) shall be on file with affirmative parent/guardian response for each student prior to the student's participation in discussion of issues protected under Section 53A-13-101; and

(7) shall be maintained at the school for a reasonable period of time.

I. "Utah educator" means an individual such as an administrator, teacher, counselor, teacher's assistant, or coach, who is employed by a unit of the Utah public education system and who provides teaching or counseling to students.

J. "Utah Professional Practices Advisory Commission (Commission)" means a Commission authorized under 53A-6-301 and designated to review allegations against educators and recommend action against educators' licenses to the Board.

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

R277-474-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-13-101(1)(c)(ii)(B) which directs the Board to develop a rule to allow local boards to adopt human sexuality education materials or programs under Board rules and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule are:

(1) to provide requirements for the Board, school districts and individual educators consistent with legislative intent and the Board Resolution of March 14, 2000 which addresses instruction about and materials used in discussing human sexuality in the public schools;

(2) to provide a process for local boards to approve human sexuality instructional materials; and

R277-474-3. General Provisions.

A. The following may not be taught in Utah public school courses through the use of instructional materials or live instruction:

(1) the intricacies of intercourse, sexual stimulation or erotic behavior;

(2) the advocacy of homosexuality;

(3) the advocacy or encouragement of the use of contraceptive methods or devices; or

(4) the advocacy of sexual activity outside of marriage.

B. Educators are responsible to teach the values and information identified under Section 53A-13-101(4).

C. Utah educators shall follow all provisions of state law including parent/guardian notification and prior written parental consent requirements under Sections 76-7-322 and 76-7-323 in teaching any aspect of human sexuality.

D. Course materials and instruction shall be free from religious, racial, ethnic, and gender bias.

R277-474-4. State Board of Education Responsibilities.

The Board shall:

A. develop and provide inservice programs and assistance with training for educators on law and rules specific to human sexuality instruction and related issues.

B. develop and provide a parental notification form and timelines for use by school districts.

C. establish a review process for human sexuality instructional materials and programs using the Instructional Materials Commission and requiring final Board approval of the Instructional Materials Commission's recommendations.

D. approve only medically accurate human sexuality instruction programs.

E. receive and track parent and community complaints and comments received from school districts related to human sexuality instructional materials and programs.

R277-474-5. School District Responsibilities.

A. Annually each school district shall require all newly hired or newly assigned Utah educators with responsibility for any aspect of human sexuality instruction to attend a state-sponsored inservice outlining the human sexuality curriculum and the criteria for human sexuality instruction in any courses offered in the public education system.

B. Each school district shall provide training consistent with R277-474-5A at least once during every three years of employment for Utah educators.

C. Local school boards shall form curriculum materials review committees (committee) at the district or school level as follows:

(1) The committee shall be organized consistent with R277-474-1B.

(2) Each committee shall designate a chair and procedures.

(3) The committee shall review and approve all guest speakers and guest presenters and their respective materials relating to human sexuality instruction in any course prior to their presentations.

(4) The committee shall not authorize the use of any human sexuality instructional program not previously approved by the Board, approved consistent with R277-474-6, or approved under Section 53A-13-101(1)(c)(ii).

(5) The district superintendent shall report educators who willfully violate the provisions of this rule to the Commission for investigation and possible discipline.

(6) The district shall use the common parental notification form or a form that satisfies all criteria of the law and Board rules, and comply with timelines approved by the Board.

(7) Each district shall develop a logging and tracking system of parental and community complaints and comments resulting from student participation in human sexuality instruction, to include the disposition of the complaints, and provide that information to the USOE upon request.

D. If a student is exempted from course material required by the Board-approved Core Curriculum, the parent shall take responsibility, in cooperation with the teacher and the school, for the student learning the required course material consistent with Sections 53A-13-101.2(1), (2) and (3).

R277-474-6. Local Board Adoption of Human Sexuality Education Instructional Materials.

A. A local board may adopt instructional materials under Section 53A-13-101(1)(c)(iii).

B. Materials that are adopted shall comply with the criteria of Section 53A-13-101(1)(c)(iii) and:

(1) shall be medically accurate as defined in R277-474-1G.

(2) shall be approved by a majority vote of the local board members present at a public meeting of the board.

(3) shall be available for reasonable review opportunities to residents of the district prior to consideration for adoption.

C. The local board shall comply with the reporting requirement of Section 53A-13-101(1)(c)(iii)(D). The report to the Board shall include:

(1) a copy of the human sexuality instructional materials not approved by the Instructional Materials Commission that the local board seeks to adopt;

(2) documentation of the materials' adoption in a public board meeting;

(3) documentation that the materials or program meets the medically accurate criteria of R277-474-6B;

(4) documentation of the recommendation of the materials by the committee; and

(5) a statement of the local board's rationale for selecting materials not approved by the Instructional Materials Commission.

D. The local board's adoption process for human sexuality instructional materials shall include a process for annual review of the board's decision. This decision may be appealed by a designated number or percentage of district patrons as defined by the local board.

R277-474-7. Utah Educator Responsibilities.

A. Utah educators shall participate in training provided under R277-474-5A.

B. Utah educators shall use the common parental notification form or a form approved by their employing school district, and timelines approved by the Board.

C. Utah educators shall individually record parent and community complaints, comments, and the educators' responses regarding human sexuality instructional programs.

D. Utah educators may respond to spontaneous student questions for the purposes of providing accurate data or correcting inaccurate or misleading information or comments made by students in class regarding human sexuality.

KEY: schools, sex education
August 8, 2006 **Art X Sec 3**
Notice of Continuation August 15, 2005 **53A-13-101(1)(c)(ii)(B)**
53A-1-401(3)

R277. Education, Administration.
R277-609. Standards for School District Discipline Plans.
R277-609-1. Definitions.

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

B. "Bullying" means behavior that:

(1) is intended to cause harm or distress;

(2) exists in a relationship in which there is an imbalance of power; and

(3) may be repeated over time.

C. "Discipline" means:

(1) Imposed discipline: Code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives; and

(2) Self-Discipline: A personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

R277-609-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control.

B. The purpose of this rule is to define bullying and outline requirements for school discipline plans and policies which school districts and charter schools shall meet to qualify for funding.

R277-609-3. District and School Plans.

A. Each school district shall develop and implement a board approved comprehensive district plan for school discipline. The plan shall include:

(1) goals and objectives, giving special emphasis to the teaching and practice of self-discipline, citizenship skills, and social skills;

(2) an evaluation process whereby the goals and objectives are assessed annually;

(3) an ongoing staff development program related to student self-discipline, good citizenship, and social skills;

(4) policies and procedures relating to the use and abuse of alcohol and controlled substances; and

(5) policies to define, prohibit, and intervene in bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students and school staff. The policies shall:

(a) provide training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(b) provide training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(c) provide training specific to cyber bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(d) provide for student assessment of the prevalence of bullying in schools/school district, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;

(e) complement existing safe and drug free school policies and school harassment and hazing policies;

(f) include strategies for providing students and staff, including aides, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training;

(g) include strategies to provide for necessary adult supervision;

(h) be clearly written and consistently enforced;

(g) include parents, community council and other community members in policy development, training and prevention implementation.

B. Each school district and school shall develop written standards for behavior and class and school management, including consequences for appropriate and inappropriate behavior. The standards shall be developed by administration, instruction and support staff, students, parents, and community members in such a manner as to create widespread understanding and a sense of participation, ownership, support, and responsibility.

C. All discipline policies and procedures, including notice to parents and students and student due process, shall be in accordance with the law.

R277-609-4. Intervention.

A continuum of intervention strategies shall be made available to assist students whose behavior in school is repeatedly short of reasonable expectations. Earnest and persistent effort shall be made to resolve individual discipline problems within the least restrictive school setting.

KEY: disciplinary actions

August 8, 2006	**Art X Sec 3**
Notice of Continuation August 10, 2004	**53A-1-401(3)**
	53A-1-402(1)
	53A-3-602.5

R277. Education, Administration.
R277-705. Secondary School Completion and Diplomas.
R277-705-1. Definitions.

In addition to terms defined in Section 53A-1-602:

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

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

C. "Criterion-referenced test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

D. "Cut score" means the minimum score a student must attain for each subtest to pass the UBSCT.

E. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

F. "Diploma" means an official document awarded by a public school district or high school consistent with state and district graduation requirements and the provisions of this rule.

G. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

H. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

I. "Section 504 Plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

J. "Special purpose schools" means schools designated by regional accrediting agencies, such as Northwest. These schools typically serve a specific population such as students with disabilities, youth in custody, or schools with specific curricular emphasis. Their courses and curricula are designed to serve their specific populations and may be modified from traditional programs.

K. "Supplemental education provider" means a private school or educational service provider which may or may not be accredited, that provides courses or services similar to public school courses/classes.

L. "Transcript" means an official document or record(s) generated by one or several schools which includes, at a minimum: the courses in which a secondary student was enrolled, grades and units of credit earned, UBSCT scores and dates of testing, citizenship and attendance records. The transcript is usually one part of the student's permanent or cumulative file which also may include birth certificate, immunization records and other information as determined by the school in possession of the record.

M. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses;

(3) direct writing assessments in grades 6 and 9;

(4) beginning with the 2003-2004 school year, a tenth grade basic skills competency test as detailed in Section 53A-1-611; and

(5) beginning with the 2002-2003 school year, the use of student behavior indicators in assessing student performance.

N. "Unit of credit" means credit awarded for courses taken consistent with this rule or upon school district/school authorization or for mastery demonstrated by approved methods.

O. "Utah Alternative Assessment (UAA)" means an assessment instrument for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with testing accommodations or modifications. The UAA measures progress on instructional goals and objectives in the student's individual education program (IEP).

P. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and district graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests.

Q. "UBSCT Advisory Committee" means a committee that is advisory to the Board with membership appointed by the Board, including appropriate representation of special populations from the following:

(1) parents;
(2) high school principal(s);
(3) high school teacher(s);
(4) district superintendent(s);
(5) Coalition of Minorities Advisory Committee;
(6) Utah State Office of Education staff;
(7) local school board(s);
(8) higher education.

R277-705-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the conduct and administration of U-PASS; 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 provide consistent definitions, provide alternative methods for students to earn and schools to award credit, to provide rules and procedures for the assessment of all students as required by law, and to provide for differentiated diplomas or certificates of completion consistent with state law.

R277-705-3. Required School District Policy Explaining Student Credit.

A. All Utah school districts or schools and charter schools shall have a policy, approved in an open meeting by the governing board, explaining the process and standards for acceptance and reciprocity of credits earned by students in accordance with Utah state law. Policies shall provide for specific and adequate notice to students and parents of all policy requirements and limitations.

B. School districts and schools shall adhere to the following standards for credits or coursework from schools, supplemental education providers accredited by the Northwest Association of Accredited Schools, and accredited distance learning schools:

(1) Public schools shall accept credits and grades awarded to students from schools or providers accredited by the Northwest Association of Accredited Schools or approved by the Board without alteration.

(2) School district or school policies may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

C. School district or school policies shall provide various methods for students to earn credit from non-accredited sources, course work or education providers. Methods, as designated by the school district or school may include:

(1) Satisfaction of coursework by demonstrated competency, as evaluated at the school district or school level;

(2) Assessment as proctored and determined at the school or school level;

(3) Review of student work or projects by school or school district administrators; and

(4) Satisfaction of electronic or correspondence coursework, as approved at the school or school district level.

D. Schools/school districts may require documentation of compliance with Section 53A-11-102 prior to reviewing student home school or competency work, assessment or materials.

E. School/school district policies for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

F. A school district or school has the final decision-making authority for the awarding of credit and grades from non-accredited sources consistent with state law, due process, and this rule.

R277-705-4. Diplomas and Certificates of Completion.

A. School districts or schools shall award diplomas and certificates of completion.

B. School districts or schools shall offer differentiated diplomas to secondary school students and adults to include:

(1) a high school diploma indicating on the diploma that a student successfully completed all state and district course requirements for graduation and passed all subtests of the UBSCT.

(2) a high school diploma indicating on the diploma that a student did not receive a passing score on all UBSCT subtests; the student shall have:

(a) met all state and district course requirements for graduation; and

(b) beginning with the graduating class of 2007, participated in UBSCT remediation consistent with school district or school policies and opportunities; and

(c) provided documentation of at least three attempts to take and pass all subtests of the UBSCT unless:

(i) the student took all subtests of the UBSCT offered while the student was enrolled in Utah schools; or

(ii) the student has been out of the secondary school system at least five years or more beginning June 1, 2006; or

(iii) a student's IEP team has determined that the student's participation in statewide assessment is through the UAA.

C. School districts or schools shall establish criteria for students to earn a certificate of completion that may be awarded to students who have completed their senior year, are exiting the school system, and have not met all state or district requirements for a diploma.

R277-705-5. Students with Disabilities.

A. A student with disabilities served by special education programs shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

B. A student may be awarded a certificate of completion or a differentiated diploma, consistent with state and federal law and the student's IEP or Section 504 Plan.

R277-705-6. Utah Basic Skills Competency Testing Requirements and Procedures.

A. All Utah public school students shall participate in Utah Basic Skills Competency testing, unless alternate assessment is designated in accordance with federal law or regulations or state law.

B. Timeline:

(1) Beginning with students in the graduating class of 2006, UBSCT requirements shall apply.

(2) No student may take any subtest of the UBSCT before the tenth grade year.

(3) Tenth graders should first take the test in the second half of their tenth grade year.

(4) Exceptions may be made to this timeline with documentation of compelling circumstances and upon review by the school principal and USOE assessment staff.

C. UBSCT components, scoring and consequences:

(1) UBSCT consists of subtests in reading, writing and mathematics.

(2) Students who reach the established cut score for any subtest in any administration of the assessment have passed that subtest.

(3) Students shall pass all subtests to qualify for a high school diploma indicating a passing score on all UBSCT subtests unless they qualify under one of the exceptions of state law or this rule such as R277-705-6D.

(4) Students who do not reach the established cut score for any subtest shall have multiple additional opportunities to retake the subtest.

(5) Students who have not passed all subtests of the UBSCT by the end of their senior year may receive a diploma indicating that a student did not receive a passing score on all UBSCT subtests or a certificate of completion.

(6) The certificate of completion or diploma indicating that a student did not receive a passing score on all UBSCT subtests may be converted to a high school diploma indicating a passing score on all UBSCT subtests whenever the student completes all current state and district diploma requirements.

(7) Beginning in June 2006, an adult student enrolled in a Utah school district adult education program may receive an adult high school diploma indicating a passing score on all UBSCT subtests and by completing all state and district diploma requirements including provisions of this rule or may receive an adult high school diploma indicating that a student did not receive a passing score on all UBSCT subtests consistent with district and state requirements.

(8) Specific testing dates shall be calendared and published at least two years in advance by the Board.

D. Reciprocity and new seniors:

(1) Students who transfer from out of state to a Utah high school after the tenth grade year may be granted reciprocity for high school graduation exams taken and passed in other states or countries based on criteria set by the Board and applied by the local board.

(2) Students for whom reciprocity is not granted and students from other states or countries that do not have high school graduation exams shall be required to pass the UBSCT before receiving a high school diploma indicating a passing score on all UBSCT subtests if they enter the system before the final administration of the test in the student's senior year.

(3) The UBSCT Advisory Committee following review of applicable documentation shall recommend to the Board the type of diploma that a student entering a Utah high school in the student's senior year after the final administration of the UBSCT may receive.

E. Testing eligibility:

(1) Building principals shall certify that all students taking the test in any administration are qualified to be tested.

(2) Students are qualified if they:

(a) are enrolled in tenth grade, eleventh, or twelfth grade (or equivalent designation in adult education) in a Utah public school program; or

(b) are enrolled in a Utah private/parochial school (with documentation) and are least 15 years old or enrolled at the

appropriate grade level; or

(c) are home schooled (with documentation required under Section 53A-11-102) and are at least 15 years old; and

(3) Students eligible for accommodations, assistive devices, or other special conditions during testing shall submit appropriate documentation at the test site.

F. Testing procedures:

(1) Three subtests make up the UBSCT: reading, writing, and mathematics. Each subtest may be given on a separate day.

(2) The same subtest shall be given to all students on the same day, as established by the Board.

(3) All sections of a subtest shall be completed in a single day.

(4) Subtests are not timed. Students shall be given the time necessary within the designated test day to attempt to answer every question on each section of the subtest.

(5) Makeup opportunities shall be provided to students for the UBSCT according to the following:

(a) Students shall be allowed to participate in makeup tests if they were not present for the entire UBSCT or subtest(s) of the UBSCT.

(b) School districts shall determine acceptable reasons for student makeup eligibility which may include absence due to illness, absence due to family emergency, or absence due to death of family member or close friend.

(c) School districts shall provide a makeup window not to exceed five school days immediately following the last day of each administration of the UBSCT.

(d) School districts shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the UBSCT.

(6) Arrangements for extraordinary circumstances or exceptions to R277-705-5 shall be reviewed and decided by the UBSCT Advisory Committee on a case-by-case basis consistent with the purposes of this rule and enabling legislation.

R277-705-7. Security and Accountability.

A. Building principals shall be responsible to secure and return completed tests consistent with Utah State Office of Education timelines.

B. School district testing directors shall account for all materials used, unused and returned.

C. Results shall be returned to students and parents/guardians no later than eight weeks following the administration of each test.

D. Appeals for failure to pass the UBSCT due to extraordinary circumstances:

(1) If a student or parent has good reason to believe, including documentation, that a testing irregularity or inaccuracy in scoring prevented a student from passing the UBSCT, the student or parent may appeal to the local board within 60 days of receipt of the test results.

(2) The local board shall consider the appeal and render a decision in a timely manner.

(3) The parent or student may appeal the local board's decision through the UBSCT Advisory Committee, under rules adopted by the Board.

(4) Appeals under this section are limited to the criteria of R277-705-7D(1).

R277-705-8. Designation of Differentiated Diplomas and Certificates of Completion.

A. As provided under Section 53A-1-611(2)(d), districts or schools shall designate in express language at least the following types of diplomas or certificates:

(1) High School Diploma indicating a passing score on all UBSCT subtests.

(2) High School Diploma indicating that a student did not receive a passing score on all UBSCT subtests.

(3) Certificate of Completion.

B. The designation shall be made on the face of the diploma or certificate of completion provided to students.

R277-705-9. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.

A. School districts shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the district.

B. A school district or school may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.

C. Diplomas or certificates, credit or unofficial transcripts may not be withheld from students for nonpayment of school fees.

D. School districts or schools shall establish consistent timelines for all students for completion of graduation requirements. Timelines shall be consistent with state law and this rule.

KEY: curricula
August 8, 2006

Art X Sec 3
53A-1-402(1)(b)
53A-1-603 through 53A-1-611
53A-1-401(3)

R313. Environmental Quality, Radiation Control.
R313-19. Requirements of General Applicability to Licensing of Radioactive Material.
R313-19-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the licensing of radioactive material. This rule also gives notice to all persons who knowingly provide to any licensee, applicant, certificate of registration holder, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's, applicant's or certificate of registration holder's activities subject to these rules, that they may be individually subject to Executive Secretary enforcement action for violation of Section R313-19-5.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

R313-19-2. General.

(1) A person shall not receive, possess, use, transfer, own or acquire radioactive material except as authorized in a specific or general license issued pursuant to Rules R313-21 or R313-22 or as otherwise provided in Rule R313-19.

(2) In addition to the requirements of Rules R313-19, R313-21 or R313-22, all licensees are subject to the requirements of Rules R313-12, R313-15, and R313-18. Licensees authorized to use sealed sources containing radioactive materials in panoramic irradiators with dry or wet storage of radioactive sealed sources, underwater irradiators, or irradiators with high dose rates from radioactive sealed sources are subject to the requirements of Rule R313-34, licensees engaged in industrial radiographic operations are subject to the requirements of Rule R313-36, licensees using radionuclides in the healing arts are subject to the requirements of Rule R313-32, licensees engaged in land disposal of radioactive material are subject to the requirements of Rule R313-25, and licensees engaged in wireline and subsurface tracer studies are subject to the requirements of Rule R313-38. Licensees engaged in source material milling operations, authorized to possess byproduct material, as defined in Section R313-12-3 (see definition (b)) from source material milling operations, authorized to possess and maintain a source material milling facility in standby mode, authorized to receive byproduct material from other persons for disposal, or authorized to possess and dispose of byproduct material generated by source material milling operations are subject to the requirements of Rule R313-24.

R313-19-5. Deliberate Misconduct.

(1) Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's or applicant's activities in these rules, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule or order; or any term, condition, or limitation of any license issued by the Executive Secretary; or

(b) Deliberately submit to the Executive Secretary, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the Executive Secretary.

(2) A person who violates Subsections R313-19-5(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-19-5(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a licensee, certificate of registration holder or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any license issued by the Executive Secretary; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material,

(B) piezoelectric ceramic containing not more than two percent by weight source material, or

(C) glassware containing not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory

Commission authorizing distribution by the licensee pursuant to 10 CFR Part 40,

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(D) The requirements specified in Subsections R313-19-13(1)(c)(v)(B) and (C) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (185.0 Bq) of uranium; or

(ix) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(ii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1) or the general license provided in Section R313-19-30.

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) and (iii) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 C.F.R. Part 32 or by the Executive Secretary pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 C.F.R. Part 31.5 is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns the radioactive material. This exemption does not apply for radium-226.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to the effective date of these rules.

(B) Lock illuminators containing not more than 15 millicuries (555.0 MBq) of tritium or not more than two millicuries (74.0 MBq) of promethium-147 installed in

automobile locks. The levels of radiation from each lock illuminator containing promethium-147 will not exceed one millirad (10 uGy) per hour at one centimeter from any surface when measured through 50 milligrams per square centimeter of absorber.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part.

(D) Automobile shift quadrants containing not more than 25 millicuries (925 MBq) of tritium.

(E) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas.

(F) Thermostat dials and pointers containing not more than 25 millicuries (925.0 MBq) of tritium per thermostat.

(G) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(H) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(H), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(I) Spark gap irradiators containing not more than one microcurie (37.0 kBq) of cobalt-60 per spark gap irradiator for use in electrically ignited fuel oil burners having a firing rate of at least three gallons (11.4 liters) per hour.

(ii) Self-luminous products containing radioactive material.

(A) Tritium, krypton-85 or promethium-147. Except for persons who manufacture, process or produce self-luminous products containing tritium, krypton-85 or promethium-147, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 C.F.R. Part 32.22, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements. The exemption in Subsection R313-19-13(2)(c)(ii) does not apply to tritium, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adornments.

(B) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, or produce gas and aerosol detectors containing radioactive material, a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards, provided that detectors containing radioactive material shall have been manufactured, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 C.F.R. Part 32.26, or a Licensing State pursuant to Subsection R313-22-75(3) or equivalent requirements, which authorizes the transfer of the detectors to persons who are exempt from regulatory requirements.

(B) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under Subsection R313-19-13(2)(c)(iii)(A), provided that the device is labeled in accordance with the specific license authorizing distribution of the general licensed device, and provided further that they meet the requirements of Subsection R313-22-75(3).

(C) Gas and aerosol detectors containing naturally occurring and accelerator-produced radioactive material (NARM) previously manufactured and distributed in accordance with a specific license issued by a Licensing State shall be considered exempt under Subsection R313-19-13(2)(c)(iii)(A), provided that the device is labeled in accordance with the specific license authorizing distribution, and provided further that they meet the requirements of Subsection R313-22-75(3).

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv)(B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Resins containing scandium-46 and designed for sand consolidation in oil wells. A person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. The resins shall have been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or shall have been manufactured in accordance with the specifications contained in a specific license issued by the Executive Secretary or an Agreement State to the manufacturer of resins pursuant to licensing requirements equivalent to those in 10 C.F.R. Part 32.16 and 32.17. This exemption does not authorize the manufacture of any resins

containing scandium-46.

(vi) With respect to Subsections R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

R313-19-20. Types of Licenses.

Licenses for radioactive materials are of two types: general and specific.

(1) General licenses provided in Rule R313-21 are effective without the filing of applications with the Executive Secretary or the issuance of licensing documents to the particular persons, although the filing of a registration certificate with the Executive Secretary may be required by the particular general license. The general licensee is subject to the other applicable portions of these rules and limitations of the general license.

(2) Specific licenses require the submission of an application to the Executive Secretary and the issuance of a licensing document by the Executive Secretary. The licensee is subject to applicable portions of these rules as well as limitations specified in the licensing document.

R313-19-25. Prelicensing Inspection.

The Executive Secretary may verify information contained in applications and secure additional information deemed necessary to make a reasonable determination as to whether to issue a license and whether special conditions should be attached thereto by visiting the facility or location where radioactive materials would be possessed or used, and by discussing details of the proposed possession or use of the radioactive materials with the applicant or representatives designated by the applicant. Such visits may be made by representatives of the Board or the Executive Secretary.

R313-19-30. Reciprocal Recognition of Licenses.

(1) Subject to these rules, a person who holds a specific license from the U.S. Nuclear Regulatory Commission, an Agreement State, or Licensing State, and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in the licensing document within this state, except in areas of exclusive federal jurisdiction, for a period not in excess of 180 days in a calendar year provided that:

(a) the licensing document does not limit the activity authorized by the document to specified installations or locations;

(b) the out-of-state licensee notifies the Executive Secretary in writing at least three days prior to engaging in such activity. Notifications shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the Executive Secretary, obtain permission to proceed sooner. The Executive Secretary may waive the requirement for filing additional written notifications during the remainder of the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in Subsection R313-19-30(1);

(c) the out-of-state licensee complies with all applicable rules of the Board and with the terms and conditions of the licensing document, except those terms and conditions which may be inconsistent with applicable rules of the Board;

(d) the out-of-state licensee supplies other information as the Executive Secretary may request; and

(e) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in Subsection R313-19-30(1) except by transfer to a person:

(i) specifically licensed by the Executive Secretary or by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State to receive the material, or

(ii) exempt from the requirements for a license for material under Subsection R313-19-13(2)(a).

(2) Notwithstanding the provisions of Subsection R313-19-30(1), a person who holds a specific license issued by the U.S. Nuclear Regulatory Commission, a Licensing State, or an Agreement State authorizing the holder to manufacture, transfer, install, or service a device described in Subsection R313-21-22(4) within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate, or service a device in this state provided that:

(a) the person shall file a report with the Executive Secretary within thirty days after the end of a calendar quarter in which a device is transferred to or installed in this state. Reports shall identify each general licensee to whom a device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(b) the device has been manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to the person by the Nuclear Regulatory Commission, a Licensing State, or an Agreement State;

(c) the person shall assure that any labels required to be affixed to the device under rules of the authority which licensed manufacture of the device bear a statement that "Removal of this label is prohibited"; and

(d) the holder of the specific license shall furnish to the general licensee to whom the device is transferred or on whose premises a device is installed a copy of the general license contained in Subsection R313-21-22(4) or in equivalent rules of the agency having jurisdiction over the manufacture and distribution of the device.

(3) The Executive Secretary may withdraw, limit, or qualify his acceptance of a specific license or equivalent licensing document issued by the U.S. Nuclear Regulatory Commission, a Licensing State or an Agreement State, or a product distributed pursuant to the licensing document, upon determining that the action is necessary in order to prevent undue hazard to public health and safety or the environment.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Executive Secretary.

(2) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Executive Secretary shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Executive Secretary, and shall give his consent in writing.

(3) Persons licensed by the Executive Secretary pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Executive Secretary in

writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Executive Secretary in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 U.S.C.101(14), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 U.S.C.101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Executive Secretary. The licensee may change the approved plan without the Executive Secretary's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Executive Secretary and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Executive Secretary.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall test the generator eluates for molybdenum-99 breakthrough in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made.

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

R313-19-41. Transfer of Material.

(1) Licensees shall not transfer radioactive material except as authorized pursuant to Section R313-19-41.

(2) Except as otherwise provided in the license and subject to the provisions of Subsections R313-19-41(3) and (4), licensees may transfer radioactive material:

(a) to the Executive Secretary, if prior approval from the Executive Secretary has been received;

(b) to the U.S. Department of Energy;

(c) to persons exempt from the rules in Rule R313-19 to the extent permitted under the exemption;

(d) to persons authorized to receive the material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a person otherwise authorized to receive the material by the federal government or an agency thereof, the Executive Secretary, an Agreement State or a Licensing State; or

(e) as otherwise authorized by the Executive Secretary in writing.

(3) Before transferring radioactive material to a specific licensee of the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, or to a general licensee who is required to register with the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by Subsection R313-19-41(3) are acceptable:

(a) the transferor may possess, and read a current copy of the transferee's specific license or registration certificate;

(b) the transferor may possess a written certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) for emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date, provided that the oral certification is confirmed in writing within ten days;

(d) the transferor may obtain other information compiled by a reporting service from official records of the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State regarding the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) when none of the methods of verification described in Subsection R313-19-41(4) are readily available or when a transferor desires to verify that information received by one of the methods is correct or up-to-date, the transferor may obtain and record confirmation from the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall be in accordance with the provisions of Section R313-19-100.

R313-19-50. Reporting Requirements.

(1) Licensees shall notify the Executive Secretary as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits. Events may include fires, explosions, toxic gas releases, etc.

(2) The following events involving licensed material require notification of the Executive Secretary by the licensee within 24 hours:

(a) an unplanned contamination event that:

(i) requires access to the contamination area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) involves a quantity of material greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2001), which is incorporated by reference, for the material; and

(iii) has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than 24 hours to decay prior to decontamination; or

(b) an event in which equipment is disabled or fails to function as designed when:

(i) the equipment is required by rule or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) the equipment is required by rule or license condition

to be available and operable; and

(iii) no redundant equipment is available and operable to perform the required safety function; or

(c) an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

(d) an unplanned fire or explosion damaging licensed material or a device, container, or equipment containing licensed material when:

(i) the quantity of material involved is greater than five times the lowest annual limit on intake specified in Appendix B of 10 CFR 20.1001 through 20.2402 (2001), which is incorporated by reference, for the material; and

(ii) the damage affects the integrity of the licensed material or its container.

(3) Preparation and submission of reports. Reports made by licensees in response to the requirements of Section R313-19-50 must be made as follows:

(a) For radioactive materials, other than special nuclear material, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Executive Secretary. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name and call back telephone number;

(ii) a description of the event, including date and time;

(iii) the exact location of the event;

(iv) the radionuclides, quantities, and chemical and physical form of the licensed material involved; and

(v) available personnel radiation exposure data.

(b) For special nuclear materials, licensees shall make reports required by Subsections R313-19-50(1) and (2) by telephone to the Executive Secretary. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(i) the caller's name, position title, and call-back telephone number;

(ii) the date, time, and exact location of the event; and

(iii) a description of the event, including:

(A) radiological or chemical hazards involved, including isotopes, quantities, and chemical and physical form of any material released; and

(B) actual or potential health and safety consequences to the workers, the public, and the environment, including relevant chemical and radiation data for actual personnel exposures to radiation or radioactive materials or hazardous chemicals produced from radioactive materials (e.g., level of radiation exposure, concentration of chemicals, and duration of exposure).

(c) Written report for materials other than special nuclear materials. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Executive Secretary. The report shall include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;

(ii) the exact location of the event;

(iii) the radionuclides, quantities, and chemical and physical form of the licensed material involved;

(iv) date and time of the event;

(v) corrective actions taken or planned and results of evaluations or assessments; and

(vi) the extent of exposure of individuals to radiation or radioactive materials without identification of individuals by name.

(d) Written report for special nuclear material. A licensee who makes a report required by Subsections R313-19-50(1) or (2) shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other rules may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports shall be sent to the Executive Secretary. The report shall include the following:

(i) the complete applicable information required by Subsection R313-19-50(3)(b);

(ii) the probable cause of the event, including all factors that contributed to the event and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned; and

(iii) corrective actions taken or planned to prevent occurrence of similar or identical events in the future and the results of any evaluations or assessments.

R313-19-61. Modification, Revocation, and Termination of Licenses.

(1) The terms and conditions of all licenses shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to the Act, or by reason of rules, and orders issued by the Executive Secretary.

(2) Licenses may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or any statement of fact required under provisions of the Act, or because of conditions revealed by the application or statement of fact or any report, record, or inspection or other means which would warrant the Executive Secretary to refuse to grant a license on an original application, or for violation of, or failure to observe any of the terms and conditions of the Act, or of the license, or of any rule, or order of the Executive Secretary.

(3) Administrative reviews, modifications, revocations or terminations of licenses will be in accordance with Title 19, Chapter 3.

(4) The Executive Secretary may terminate a specific license upon written request submitted by the licensee to the Executive Secretary.

R313-19-70. Exempt Concentrations of Radioactive Materials.

Refer to Subsection R313-19-13(2)(a)

TABLE

Element (Atomic Number)	Radionuclide	Column I Concentration Material Normally Used As Gas (uCi/ml)	Column II Concentration Liquid (uCi/ml) Solid (uCi/g)
Antimony (51)	Sb-122		3 E-4
	Sb-124		2 E-4
	Sb-125		1 E-3
Argon (18)	Ar-37	1 E-3	
	Ar-41	4 E-7	
Arsenic (33)	As-73		5 E-3
	As-74		5 E-4
	As-76		2 E-4
	As-77		8 E-4
Barium (56)	Ba-131		2 E-3
	Ba-140		3 E-4
Beryllium (4)	Be-7		2 E-2
Bismuth (83)	Bi-206		4 E-4
Bromine (35)	Br-82	4 E-7	3 E-3
Cadmium (48)	Cd-109		2 E-3
	Cd-115m		3 E-4
	Cd-115		3 E-4
Calcium (20)	Ca-45		9 E-5
	Ca-47		5 E-4
Carbon (6)	C-14	1 E-6	8 E-3
Cerium (58)	Ce-141		9 E-4
	Ce-143		4 E-4

	Ce-144		1 E-4
Cesium (55)	Cs-131		2 E-2
	Cs-134m		6 E-2
	Cs-134		9 E-5
Chlorine (17)	Cl-38	9 E-7	4 E-3
Chromium (24)	Cr-51		2 E-2
Cobalt (27)	Co-57		5 E-3
	Co-58		1 E-3
	Co-60		5 E-4
Copper (29)	Cu-64		3 E-3
Dysprosium (66)	Dy-165		4 E-3
	Dy-166		4 E-4
Erbium (68)	Er-169		9 E-4
	Er-171		1 E-3
Europium (63)	Eu-152 (T = 9.2 h)		6 E-4
	Eu-155		2 E-3
Fluorine (9)	F-18	2 E-6	8 E-3
Gadolinium (64)	Gd-153		2 E-3
	Gd-159		8 E-4
Gallium (31)	Ga-72		4 E-4
Germanium (32)	Ge-71		2 E-2
Gold (79)	Au-196		2 E-3
	Au-198		5 E-4
	Au-199		2 E-3
Hafnium (72)	Hf-181		7 E-4
Hydrogen (1)	H-3	5 E-6	3 E-2
Indium (49)	In-113m		1 E-2
	In-114m		2 E-4
Iodine (53)	I-126	3 E-9	2 E-5
	I-131	3 E-9	2 E-5
	I-132	8 E-8	6 E-4
	I-133	1 E-8	7 E-5
	I-134	2 E-7	1 E-3
Iridium (77)	Ir-190		2 E-3
	Ir-192		4 E-4
	Ir-194		3 E-4
Iron (26)	Fe-55		8 E-3
	Fe-59		6 E-4
Krypton (36)	Kr-85m	1 E-6	
	Kr-85	3 E-6	
Lanthanum (57)	La-140		2 E-4
Lead (82)	Pb-203		4 E-3
Lutetium (71)	Lu-177		1 E-3
Manganese (25)	Mn-52		3 E-4
	Mn-54		1 E-3
	Mn-56		1 E-3
Mercury (80)	Hg-197m		2 E-3
	Hg-197		3 E-3
	Hg-203		2 E-4
Molybdenum (42)	Mo-99		2 E-3
Neodymium (60)	Nd-147		6 E-4
	Nd-149		3 E-3
Nickel (28)	Ni-65		1 E-3
Niobium (Columbium)(41)	Nb-95		1 E-3
	Nb-97		9 E-3
Osmium (76)	Os-185		7 E-4
	Os-191m		3 E-2
	Os-191		2 E-3
	Os-193		6 E-4
Palladium (46)	Pd-103		3 E-3
	Pd-109		9 E-4
Phosphorus (15)	P-32		2 E-4
Platinum (78)	Pt-191		1 E-3
	Pt-193m		1 E-2
	Pt-197m		1 E-2
	Pt-197		1 E-3
Potassium (19)	K-42		3 E-3
Praseodymium (59)	Pr-142		3 E-4
	Pr-143		5 E-4
Promethium (61)	Pm-147		2 E-3
	Pm-149		4 E-3
Rhenium (75)	Re-183		6 E-4
	Re-186		9 E-3
	Re-188		6 E-4
Rhodium (45)	Rh-103m		1 E-1
	Rh-105		1 E-3
Rubidium (37)	Rb-86		7 E-4
Ruthenium (44)	Ru-97		4 E-4
	Ru-103		8 E-4
	Ru-105		1 E-3
	Ru-106		1 E-4
Samarium (62)	Sm-153		8 E-4
Scandium (21)	Sc-46		4 E-4
	Sc-47		9 E-4
	Sc-48		3 E-4
Selenium (34)	Se-75		3 E-3
Silicon (14)	Si-31		9 E-3
Silver (47)	Ag-105		1 E-3
	Ag-110m		3 E-4
	Ag-111		4 E-4
Sodium (11)	Na-24		2 E-3
Strontium (38)	Sr-85		1 E-4
	Sr-89		1 E-4
	Sr-91		7 E-4
	Sr-92		7 E-4
Sulfur (16)	S-35	9 E-8	6 E-4
Tantalum (73)	Ta-182		4 E-4
Technetium (43)	Tc-96m		1 E-1
	Tc-96		1 E-3
Tellurium (52)	Te-125m		2 E-3
	Te-127m		6 E-4
	Te-127		3 E-3
	Te-129m		3 E-4
	Te-131m		6 E-4
	Te-132		3 E-4
Terbium (65)	Tb-160		4 E-4
Thallium (81)	Tl-200		4 E-3
	Tl-201		3 E-3
	Tl-202		1 E-3
	Tl-204		1 E-3
Thulium (69)	Tm-170		5 E-4
	Tm-171		5 E-3
Tin (50)	Sn-113		9 E-4
	Sn-125		2 E-4
Tungsten (Wolfram)(74)	W-181		4 E-3
	W-187		7 E-4
Vanadium (23)	V-48		3 E-4
Xenon (54)	Xe-131m	4 E-6	
	Xe-133	3 E-6	
	Xe-135	1 E-6	
Ytterbium (70)	Yb-175		1 E-3
Yttrium (39)	Y-90		2 E-4
	Y-91m		3 E-2
	Y-91		3 E-4
	Y-92		6 E-4
	Y-93		3 E-4
Zinc (30)	Zn-65		1 E-3
	Zn-69m		7 E-4
	Zn-69		2 E-2
Zirconium (40)	Zr-95		6 E-4
	Zr-97		2 E-4
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years		1 E-10	1 E-6

(1) In expressing the concentrations in Section R313-19-70, the activity stated is that of the parent radionuclide and takes into account the radioactive decay products, because many radionuclides disintegrate into radionuclides which are also radioactive.

(2) For purposes of Subsection R313-19-13(2)(a) where there is involved a combination of radionuclides, the limit for the combination should be derived as follows: Determine for each radionuclide in the product the ratio between the radioactivity concentration present in the product and the exempt radioactivity concentration established in Section R313-19-70 for the specific radionuclide when not in combination. The sum of the ratios may not exceed one or unity.

(3) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-71. Exempt Quantities of Radioactive Materials.

Refer to Subsection R313-19-13(2)(b)

TABLE

RADIOACTIVE MATERIAL	MICROCURIES
Antimony-122 (Sb-122)	100
Antimony-124 (Sb-124)	10
Antimony-125 (Sb-125)	10
Arsenic-73 (As-73)	100
Arsenic-74 (As-74)	10
Arsenic-76 (As-76)	10
Arsenic-77 (As-77)	100
Barium-131 (Ba-131)	10
Barium-133 (Ba-133)	10
Barium-140 (Ba-140)	10
Bismuth-210 (Bi-210)	1
Bromine-82 (Br-82)	10
Cadmium-109 (Cd-109)	10
Cadmium-115m (Cd-115m)	10
Cadmium-115 (Cd-115)	100

Calcium-45 (Ca-45)	10
Calcium-47 (Ca-47)	10
Carbon-14 (C-14)	100
Cerium-141 (Ce-141)	100
Cerium-143 (Ce-143)	100
Cerium-144 (Ce-144)	1
Cesium-129 (Cs-129)	100
Cesium-131 (Cs-131)	1,000
Cesium-134m (Cs-134m)	100
Cesium-134 (Cs-134)	1
Cesium-135 (Cs-135)	10
Cesium-136 (Cs-136)	10
Cesium-137 (Cs-137)	10
Chlorine-36 (Cl-36)	10
Chlorine-38 (Cl-38)	10
Chromium-51 (Cr-51)	1,000
Cobalt-57 (Co-57)	100
Cobalt-58m (Co-58m)	10
Cobalt-58 (Co-58)	10
Cobalt-60 (Co-60)	1
Copper-64 (Cu-64)	100
Dysprosium-165 (Dy-165)	10
Dysprosium-166 (Dy-166)	100
Erbium-169 (Er-169)	100
Erbium-171 (Er-171)	100
Europium-152 (Eu-152) 9.2h	100
Europium-152 (Eu-152) 13 yr	1
Europium-154 (Eu-154)	1
Europium-155 (Eu-155)	10
Fluorine-18 (F-18)	1,000
Gadolinium-153 (Gd-153)	10
Gadolinium-159 (Gd-159)	100
Gallium-67 (Ga-67)	100
Gallium-72 (Ga-72)	10
Germanium-68 (Ge-68)	10
Germanium-71 (Ge-71)	100
Gold-195 (Au 195)	10
Gold-198 (Au-198)	100
Gold-199 (Au-199)	100
Hafnium-181 (Hf-181)	10
Holmium-166 (Ho-166)	100
Hydrogen-3 (H-3)	1,000
Indium-111 (In-111)	100
Indium-113m (In-113m)	100
Indium-114m (In-114m)	10
Indium-115m (In-115m)	100
Indium-115 (In-115)	10
Iodine-123 (I-123)	100
Iodine-125 (I-125)	1
Iodine-126 (I-126)	1
Iodine-129 (I-129)	0.1
Iodine-131 (I-131)	1
Iodine-132 (I-132)	10
Iodine-133 (I-133)	1
Iodine-134 (I-134)	10
Iodine-135 (I-135)	10
Iridium-192 (Ir-192)	10
Iridium-194 (Ir-194)	100
Iron-52 (Fe-52)	10
Iron-55 (Fe-55)	100
Iron-59 (Fe-59)	10
Krypton-85 (Kr-85)	100
Krypton-87 (Kr-87)	10
Lanthanum-140 (La-140)	10
Lutetium-177 (Lu-177)	100
Manganese-52 (Mn-52)	10
Manganese-54 (Mn-54)	10
Manganese-56 (Mn-56)	10
Mercury-197m (Hg-197m)	100
Mercury-197 (Hg-197)	100
Mercury-203 (Hg-203)	10
Molybdenum-99 (Mo-99)	100
Neodymium-147 (Nd-147)	100
Neodymium-149 (Nd-149)	100
Nickel-59 (Ni-59)	100
Nickel-63 (Ni-63)	10
Nickel-65 (Ni-65)	100
Niobium-93m (Nb-93m)	10
Niobium-95 (Nb-95)	10
Niobium-97 (Nb-97)	10
Osmium-185 (Os-185)	10
Osmium-191m (Os-191m)	100
Osmium-191 (Os-191)	100
Osmium-193 (Os-193)	100
Palladium-103 (Pd-103)	100
Palladium-109 (Pd-109)	100
Phosphorus-32 (P-32)	10
Platinum-191 (Pt-191)	100
Platinum-193m (Pt-193m)	100
Platinum-193 (Pt-193)	100
Platinum-197m (Pt-197m)	100
Platinum-197 (Pt-197)	100
Polonium-210 (Po-210)	0.1
Potassium-42 (K-42)	10
Potassium-43 (K-43)	10
Praseodymium-142 (Pr-142)	100
Praseodymium-143 (Pr-143)	100
Promethium-147 (Pm-147)	10
Promethium-149 (Pm-149)	10
Rhenium-186 (Re-186)	100
Rhenium-188 (Re-188)	100
Rhodium-103m (Rh-103m)	100
Rhodium-105 (Rh-105)	100
Rubidium-81 (Rb-81)	10
Rubidium-86 (Rb-86)	10
Rubidium-87 (Rb-87)	10
Ruthenium-97 (Ru-97)	100
Ruthenium-103 (Ru-103)	10
Ruthenium-105 (Ru-105)	10
Ruthenium-106 (Ru-106)	1
Samarium-151 (Sm-151)	10
Samarium-153 (Sm-153)	100
Scandium-46 (Sc-46)	10
Scandium-47 (Sc-47)	100
Scandium-48 (Sc-48)	10
Selenium-75 (Se-75)	10
Silicon-31 (Si-31)	100
Silver-105 (Ag-105)	10
Silver-110m (Ag-110m)	1
Silver-111 (Ag-111)	100
Sodium-22 (Na-22)	10
Sodium-24 (Na-24)	10
Strontium-85 (Sr-85)	10
Strontium-89 (Sr-89)	1
Strontium-90 (Sr-90)	0.1
Strontium-91 (Sr-91)	10
Strontium-92 (Sr-92)	10
Sulfur-35 (S-35)	100
Tantalum-182 (Ta-182)	10
Technetium-96 (Tc-96)	10
Technetium-97m (Tc-97m)	100
Technetium-97 (Tc-97)	100
Technetium-99m (Tc-99m)	100
Technetium-99 (Tc-99)	10
Tellurium-125m (Te-125m)	10
Tellurium-127m (Te-127m)	10
Tellurium-127 (Te-127)	100
Tellurium-129m (Te-129m)	10
Tellurium-129 (Te-129)	100
Tellurium 131m (Te-131m)	10
Tellurium-132 (Te-132)	10
Terbium-160 (Tb-160)	10
Thallium-200 (Tl-200)	100
Thallium-201 (Tl-201)	100
Thallium-202 (Tl-202)	100
Thallium-204 (Tl-204)	10
Thulium-170 (Tm-170)	10
Thulium-171 (Tm-171)	10
Tin-113 (Sn-113)	10
Tin-125 (Sn-125)	10
Tungsten-181 (W-181)	10
Tungsten-185 (W-185)	10
Tungsten-187 (W-187)	100
Vanadium-48 (V-48)	10
Xenon-131m (Xe-131m)	1,000
Xenon-133 (Xe-133)	100
Xenon-135 (Xe-135)	100
Ytterbium-175 (Yb-175)	100
Yttrium-87 (Y-87)	10
Yttrium-88 (Y-88)	10
Yttrium-90 (Y-90)	10
Yttrium-91 (Y-91)	10
Yttrium-92 (Y-92)	100
Yttrium-93 (Y-93)	100
Zinc-65 (Zn-65)	10
Zinc-69m (Zn-69m)	100
Zinc-69 (Zn-69)	1,000
Zirconium-93 (Zr-93)	10
Zirconium-95 (Zr-95)	10
Zirconium-97 (Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material.	0.1

(1) To convert microcuries (uCi) to SI units of kilobecquerels (kBq), multiply the above values by 37.

R313-19-100. Transportation.

For purposes of Section R313-19-100, 10 CFR 71.4, 71.12, 71.13(a) and (b), 71.14, 71.16, 71.47, 71.83, 71.85 through 71.89, 71.97, and Appendix A to Part 71 (2002) are incorporated by reference with the following clarifications or exceptions:

(1) The substitution of the following:

(a) "Licensee" for reference to "licensee of the Commission";

(b) "Subsection R313-19-100(3)" for reference to "10 CFR 71.5";

(c) "Subsection R313-15-906(5)" for reference to "10 CFR 20.1906(e)"; and

(d) "Section R313-15-502" for reference to "10 CFR 20.1502".

(2) The exclusion of "certificate holder", "close reflection by water", "containment system", "conveyance", "licensed material", "maximum normal operating pressure", "optimum interspersed hydrogenous moderation", and "state" in 10 CFR 71.4.

(3) Transportation of licensed material.

(a) Each licensee who transports licensed material outside the site of usage, as specified in the license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the U.S. Department of Transportation (DOT) regulations in 49 CFR 170 through 189 (2002) appropriate to the mode of transport.

(i) The licensee shall particularly note DOT regulations in the following areas:

(A) Packaging--49 CFR 173.1 through 173.13, 173.21 through 173.40, and 173.401 through 173.476;

(B) Marking and labeling--49 CFR 172.300 through 172.338, 172.400 through 172.407, 172.436 through 172.440, and 172.400 through 172.450;

(C) Placarding--49 CFR 172.500 through 172.560 and Appendices B and C;

(D) Accident reporting--49 CFR 171.15 and 171.16;

(E) Shipping papers and emergency information--49 CFR 172.200 through 172.205 and 172.600 through 172.606;

(F) Hazardous material employee training--49 CFR 172.700 through 172.704; and

(G) Hazardous material shipper/carrier registration--49 CFR 107.601 through 107.620.

(ii) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(A) Rail--49 CFR 174.1 through 174.86 and 174.700 through 174.750;

(B) Air--49 CFR 175;

(C) Vessel--49 CFR 176.1 through 176.99 and 176.700 through 176.715; and

(D) Public Highway--49 CFR 177 and 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, wavier, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Executive Secretary.

(c) No person shall transport radioactive material or deliver radioactive material to a carrier for transport except as authorized in a general or specific license issued by the Executive Secretary or as exempted in R313-19-100(4).

(4) Exemptions.

(a) Common and contract carriers, freight forwarders and warehouse workers which are subject to the requirements of the U.S. Department of Transportation in 49 CFR 170 through 189 or the U.S. Postal Service in the U.S. Postal Service Domestic Mail Manual (DMM), Section C-023.9.0, and the U.S. Postal Service, are exempt from the requirements of R313-19-100 to the extent that they transport or store radioactive material in the regular course of their carriage for others or storage incident thereto. Common and contract carriers who are not subject to the requirements of the U.S. Department of Transportation or U.S. Postal Service are subject to the requirements of R313-19-100(3)(c) and other applicable requirements of these rules.

(b) Any licensee is exempt from the requirements of R313-19-100 to the extent that the licensee delivers to a carrier for transport a package containing radioactive material having a specific activity not greater than 70 becquerel per gram (0.002 microcurie per gram).

KEY: license, reciprocity, transportation, exemptions
August 11, 2006 19-3-104
Notice of Continuation October 10, 2001 19-3-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-1. Utah Hazardous Waste Definitions and References.
R315-1-1. Definitions.

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10 and 279.1, 2000 ed., as amended by 67 FR 2962, January 22, 2002, are adopted and incorporated by reference with the following revisions:

(1) Substitute "Executive Secretary" for "Regional Administrator" or "Administrator," except in the following cases:

(i) In the actual definitions of "Administrator" and "Regional Administrator;" and

(ii) In the definitions of "hazardous waste constituent" and "industrial furnace" where "Board" shall be substituted.

(2) Insert in the definition of "existing tank system" or "existing component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(3) Insert in the definition of "new tank system" or "new tank component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265.193(g)(2) and 40 CFR 264.193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(c) The terms defined in 40 CFR 261.1(c), 1997 ed., are adopted and incorporated by reference.

(d) For purposes of R315-3 regarding application and permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, 1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "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;

(2) "Director" or "State Director" means "Executive Secretary;" and

(3) Replace existing definition of "corrective action management unit" with the definition as found in 40 CFR 260.10, 2000 ed.

(e) The definitions of "Polychlorinated biphenyl, PCB," and "Polychlorinated item" as found in 761.3, 40 CFR, 1990 ed., are adopted and incorporated by reference.

(f) In addition, the following terms are defined as follows:

(1) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under 19-6-108 and R315-3, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(2) "Division" means the Division of Solid and Hazardous Waste.

(3) "Hazard class" means:

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

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in R315-2-9.

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

(5) "POHC's" means principle organic hazardous constituents.

(6) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(7) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

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

(9) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(g) Terms used in R315-15 are defined in sections 19-6-703 and 19-6-706(2)(b)(ii).

(h) For purposes of R315-101 regarding cleanup action and risk-based closure standards, the following terms are defined as follows:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, $C=\text{Mean} + t \times \text{Standard Deviation}/n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, $C=\exp(\text{Mean of lognormal-transformed data} + 0.5 \times \text{Variance of lognormal-transformed data} + \text{Standard Deviation of lognormal-transformed data} \times H/(n-1)^{1/2})$, where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-1-2. References.

(a) For purposes of R315-1 through R315-101, the publication references of 40 CFR 260.11, 2001 ed., are adopted and incorporated by reference.

(b) R315-1 through R315-101 incorporate by reference a number of provisions from 40 CFR. The incorporated provisions sometimes include cross-references to other sections of 40 CFR. Wherever there are sections in R315-1 through R315-101 that correspond to those cross-references, the cross-references of 40 CFR are not incorporated into R315-1 through R315-101. Instead, the corresponding sections in R315-1 through R315-101 shall apply.

KEY: hazardous waste
September 15, 2003 19-6-105
Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under R315-3 through R315-9 and R315-13 of these rules and which are subject to the notification requirements of these rules.

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

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

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

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

R315-2-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by subsection R315-2-4(a) or that is not excluded by variance granted under R315-2-18 and R315-2-19.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are abandoned by being;

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section. Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(17) for mineral processing secondary materials)."

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(17), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021, unless used as an ingredient to make a product at the site of generation, F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in R315-2-9 through R315-2-10 and R315-2-24, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 40 CFR 261 Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Board will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in R315-50-10 and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. After June 30, 1999, in cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at R315-2-4(a)(16) apply rather than this provision.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, described in paragraphs (e)(1)(i)-(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing the Utah Solid and Hazardous Waste Act who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

R315-2-3. Definition of Hazardous Waste.

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) RESERVED.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under R315-2-16 and R315-2-17, or paragraph (f) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, which incorporates by reference 40 CFR 261 subpart D, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per

liter.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) or (f) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (v). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste N0. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Board, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(f)(1) A hazardous waste that is listed in R315-2-10 or R315-2-11 solely because it exhibits one or more characteristics of ignitability as defined under R315-2-9(d), corrosivity as defined under R315-2-9(e), or reactivity as defined under R315-2-9(f) is not hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d), (e), (f), or (g).

(2) The exclusion described in paragraph (f)(1) of this section also pertains to

(i) Any mixture of a solid waste and a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(a)(2)(iv); and,

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(c)(2)(i).

(3) Wastes excluded from R315-2-3 are subject to R315-13-1, which incorporates by reference 40 CFR 268, (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under R315-2-4(b)(7) and a hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d) - (g) for which the hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, was listed.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

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

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

(3) Irrigation return flows.

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

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

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

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

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

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

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

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

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

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

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

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

(B) Prior to reuse, the wastewaters and spent wood

preserving solutions are managed to prevent release to either land or groundwater or both;

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

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

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

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

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

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

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

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

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

(16) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

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

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

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

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or

environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

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

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

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

(vi) For purposes of R315-2-4(a)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

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

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

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

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

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

(i) Receives and burns only

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

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

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

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

(i) The growing and harvesting of agricultural crops.

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

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

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

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

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

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

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

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

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

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

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

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

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing

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

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

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

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

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

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

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

(M) Iron blast furnace slag;

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

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

(P) Process wastewater from phosphoric acid production;

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

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

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

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

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

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

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

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

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

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

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

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

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

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

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

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

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

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

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

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

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(16) The requirements as found in 40 CFR 261.4(b)(18), 2001 ed., are adopted and incorporated by reference with the following exceptions:

(i) Substitute "EPA and the Executive Secretary" for all federal regulation references made to "EPA";

(ii) Substitute "Executive Secretary" for all federal regulation references made to "state of Utah."

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

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

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

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

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

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

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

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

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

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

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

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

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

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-4(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

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

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

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

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

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

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

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

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

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

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

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

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

(E) Such other information that the Executive Secretary considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

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

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

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

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

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

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

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

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

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

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

(vi) the date the treatability study was concluded; and

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

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

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

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

(ii) the types, by process, of treatability studies conducted;

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

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

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

(vi) when each treatability study was conducted; and

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

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

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

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

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

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;

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

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

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, 1996 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference within this rule, except for the following changes:

(a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either

(i) an empty container, or

(ii) an empty inner liner removed from a container, as defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

(2) Any hazardous waste in either:

(i) a container that is not empty, or

(ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-2-8. PCB Wastes Regulated under the Toxic Substance Control Act, 42 U.S.C. et seq.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic, hazardous codes D018 through D043 only, are exempt from regulation under R315-2 through R315-50 and the notification requirements of section 3010 of RCRA.

R315-2-9. Characteristics of Hazardous Waste.

(a) GENERAL.

(1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

(3) For purposes of this section, the Executive Secretary will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

(1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

(i) A solid waste that exhibits the characteristic may:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(ii) The characteristic can be:

(A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

(1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in this section.

(ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA

Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.5 ed., or a "Class 1 explosive" as defined in 49 CFR 173.50(b)(1), (2), or (3), which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990 ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)

Corrosive Waste: (C)

Reactive Waste: (R)

Toxicity Characteristic Waste: (E)

Acute Hazardous Waste: (H)

Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 2000 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 2002 ed., is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b).

Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 2000 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which hazardous wastes are generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to these wastes for the purpose of ascertaining the compliance with R315-1 through R315-101. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

R315-2-13. Variances Authorized.

(a) Variances will be granted by the Board only to the extent allowed under State and Federal law.

(b) The Board may consider a variance request in accordance with the standard established in section 19-6-111.(c) The Board may, at its own instance, review any variance granted during the term for which a variance was granted.

(d) A person applying for a variance shall submit the application, in writing, to the Executive Secretary. The application shall provide the following:

(1) Citation of the statutory, regulatory, or permit requirement from which the variance is sought;

(2) For variances for which the Board promulgates or has promulgated specific rules, information meeting the requirements of those rules;

(3) Information demonstrating that application of or compliance with the requirement would cause undue or unreasonable hardship on the person applying for the variance;

(4) Proposed alternative requirements, if any;

(5) Information demonstrating that the variance will achieve the purpose and intent of the statutory, regulatory, or permit provision from which the variance is sought;

(6) Information demonstrating that any alternative requirement or requirements will adequately protect human health and the environment; and

(7) If no alternative requirement is proposed, information demonstrating that if the variance is granted, human health and the environment will be adequately protected.

(e) A person applying for a variance shall provide such additional information as the Board or the Executive Secretary requires.

(f) Nothing in R315-2-13(d) or (e) limits the authority of the Board to grant variances in accordance with the standard established in section 19-6-111. A person applying for a variance under R315-9-2 shall provide such information described under R315-2-13(d) as the Executive Secretary directs.

R315-2-14. Violations, Orders, and Hearings.

(a) Whenever the Board or its duly appointed representative, as expressly delegated by the Board, determines that any person is in violation of any applicable approved hazardous waste operation plan or the requirements of R315-1 through R315-101, the Board or its duly appointed representative may cause written notice of that violation to be served upon the alleged violators. That notice shall specify the provisions of the plan, the rules alleged to have been violated, and the facts alleged to constitute the violation. The Board or its duly appointed representative 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 R315-1 through R315-101.

(b) Any order issued pursuant to 19-6-112 and R315-2-14(a) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. The request shall:

(1) be in writing;

(2) be addressed to the Executive Secretary;

(3) include the order number;

(4) state the facts;

(5) state the relief sought; and

(6) state the reasons the relief requested should be granted.

(c) Utah Administrative Procedures Act, 63-46b, and R315-12, shall govern the conduct of hearings before the Board.

R315-2-15. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical

method to R315-2, R315-7, R315-8, or R315-50, which incorporates the testing and analytical methods of 40 CFR 261, may petition for a regulatory amendment under this section and R315-2-17. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in R315-2, R315-7, R315-8, or R315-50, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including, where appropriate, suggested regulatory language;

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information;

(5) A full description of the proposed method, including all procedural steps and equipment used in the method;

(6) A description of the types of wastes or waste matrices for which the proposed method may be used;

(7) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in R315-2, R315-7, R315-8, and R315-50;

(8) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(9) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which it may reasonably require to evaluate the method.

(d) The Board will consider any petitions in accordance with rulemaking procedures outlined in Section 63-46a-12.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board.

R315-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22, 1993 ed., as amended by 58 FR 46040, August 31, 1993, regarding petitions to exclude a waste are adopted and incorporated by reference with the following amendments:

(1) Substitute "Board" for "Administrator;"

(2) Include the following paragraphs:

(i) The Board will consider any petitions in accordance with rulemaking procedures outlined in Title 63, Chapter 46a, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, Title 63, Chapter 46b, and Rule R315-12.

(ii) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under this section for the relief sought.

R315-2-17. Petition to Amend Rules.

(a) It is the intent of the Board to insure the compatibility and equivalency of R315-1 through R315-101 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in R315-1 through R315-16, R315-50, R315-101, and R315-102. A petition shall be considered under the procedures outlined in 63-46a-12 and R15-2.

R315-2-18. Variances from Classification as a Solid Waste.

The variances from classification as a solid waste of 40 CFR 260.30, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The standards and criteria for variances from classification as a solid waste found in 40 CFR 260.31, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

(1) Substitute "Board" for "Regional Administrator."

R315-2-20. Variance to be Classified as a Boiler.

The provision for a variance to be classified as a boiler as found in 40 CFR 260.32, 1994 ed., as amended by 59 FR 47982, September 19, 1994, is adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.

The procedures for variances from classification as a solid waste or boiler of 40 CFR 260.33, ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.

The provision regarding the regulation of certain hazardous waste recycling activities of 40 CFR 260.40, 1990 ed., is adopted and incorporated by reference with the following amendment:

Substitute "Executive Secretary" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Executive Secretary shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in R315-2-6, which incorporates by reference the requirements of 40 CFR 261.6 regarding recyclable materials, under the provisions of 40 CFR 261.6 (b) and (c), rather than under the provisions of 40 CFR 266.70 concerning precious metals recovery.

(a) If a generator is accumulating the waste, the Executive Secretary will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of R315-5. The notice will become final within 30 days, unless the person served requests a public hearing before the Board to challenge the decision. Upon receiving such a request, the Board will hold a hearing. The Board will provide notice of the hearing to the public and allow public participation at the hearing. The Board will issue a final order after the hearing stating whether or not compliance with R315-5 is required. The order becomes effective 30 days after service of the decision unless the Board specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a hazardous waste operation permit in accordance with all applicable provisions of R315-3. The owner or operator of

the facility must apply for a hazardous waste operation plan approval within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Board's decision, he may do so in his hazardous waste operation plan, in a public hearing held on the draft plan approval, or in comments filed on the draft hazardous waste operation plan approval, or on the notice of intent to deny the hazardous waste operation plan. The fact sheet accompanying the hazardous waste operation plan approval will specify the reasons for the Board's determination. The question of whether the Board's decision was proper will remain open for consideration during the public comment period discussed under R315-4-1.11 and in any subsequent hearing.

R315-2-24. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

(a) Batteries as described in R315-16-1.2;

(b) Pesticides as described in R315-16-1.3;

(c) Mercury thermostats as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.5.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, 2001 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

KEY: hazardous wastes
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-3-1. General Information.

1.1 PURPOSE AND SCOPE OF THESE REGULATIONS

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the Executive Secretary for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste permit pursuant to this section and section 19-6-108 for that facility, may continue to operate that facility without violating this section until the time as the permit is approved or disapproved pursuant to this section.

(b) The Executive Secretary shall review each proposed hazardous waste permit application to determine whether the application will be in accord with the provisions of these rules and section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in section 19-6-108. If, after the receipt of plans, specifications, or other information required under this section and section 19-6-108 and within the applicable time period of section 19-6-108, the Executive Secretary determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of this section or the applicable rules, he shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date of all required information is provided to the Executive Secretary as required by these rules.

(c) Any permit application which does not meet the requirements of these rules shall be disapproved within the applicable time period specified in section 19-6-108. If within the applicable time period specified in section 19-6-108 the Executive Secretary fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the Executive Secretary for a decision or seek judicial relief requiring a decision of approval or disapproval.

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

(e) Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, according to R315-7-14, which incorporates by reference 40 CFR 265.115, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under R315-3-1.1(e)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as provided under R315-3-1.1(e)(7). If a post-closure permit is required, the permit shall address applicable R315-8 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of R315. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under R315-3-1.1.

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

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. However, the owner or operator with a State or Federal UIC permit will be deemed to have a "permit by rule" if they comply with requirements of R315-3-6.1(a).

(ii) Treatment, storage, and disposal of hazardous waste at facilities requiring and NPDES permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a "permit by rule" if they comply with provisions of R315-3-6.1(b).

(2) Specific exclusions. The following persons are among those who are not required to obtain a permit:

(i) Generators who accumulate hazardous waste on-site for less than the time periods as provided in R315-5-3.34, which incorporates the requirements of 40 CFR 262.34.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in R315-5-7.

(iii) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under R315-2-5, small quantity generator exemption.

(iv) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(v) Owners of operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.32(b) at a transfer facility for a period of ten days or less.

(vii) Persons adding absorbent material to waste in a container, as defined in 40 CFR 260.10, which is incorporated by reference in R315-1, and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container, and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with.

(viii) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9) managing the wastes listed below. These handlers are subject to regulation under R315-16.

(A) Batteries as described in R315-16-1.2;

(B) Pesticides as described in R315-16-1.3;

(C) Thermostats as described in R315-16-1.4; and

(D) Mercury lamps as described in R315-16-1.5.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations;

(A) Discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste.

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

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

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

(5) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under R315-7 standards shall obtain a post-closure permit unless they can demonstrate to the Executive Secretary that the closure met the standards for closure by removal or decontamination in R315-8-11.5, R315-8-13.8, or R315-8-12.6, respectively. The demonstration may be made in the following ways:

(i) If the owner or operator has submitted a part B application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that R315-8 closure by removal standards were met. If the Executive Secretary believes that R315-8 standards were met, he will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in R315-3-1.1(e)(6);

(ii) If the owner or operator has not submitted a part B permit application for a post-closure permit, the owner or operator may petition the Executive Secretary for a determination that a post-closure permit is not required because the closure met the applicable R315-8 closure standards;

(A) The petition shall include data demonstrating that closure by the removal or decontamination standards of R315-8 were met.

(B) The Executive Secretary shall approve or deny the petition according to the procedures outlined in R315-3-1.1(e)(6).

(6) Procedures for Closure Equivalency Determination.

(i) If a facility owner or operator seeks an equivalency demonstration under R315-3-1.1(e)(5), the Executive Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The Executive Secretary will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the equivalence of the R315-7 closure to an R315-8 closure. The Executive Secretary will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(ii) The Executive Secretary will determine whether the R315-7 closure met R315-8 closure by removal or decontamination requirements within 90 days of its receipt. If the Executive Secretary finds that the closure did not meet the applicable R315-8 standards, he will provide the owner or operator with a written statement of the reasons why the closure failed to meet R315-8 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving a written statement. The Executive Secretary will review any additional information submitted and make a final determination within 60 days.

(iii) If the Executive Secretary determines that the facility did not close in accordance with R315-8-7, which incorporates by reference 40 CFR 264.110 through 264.116, closure by removal standards, the facility is subject to post-closure permit requirements.

(7) Enforceable documents for post-closure care. At the discretion of the Executive Secretary, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of R315-7-14, which incorporates by reference 40 CFR 265.121. "Enforceable document" means an order, a permit, or other document issued by the Executive Secretary that meets the requirements of 19-6-104, 19-6-112, 19-6-113, and 19-6-115, including a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure permit.

1.4 EFFECT OF A PERMIT

(a) Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with these rules, except for those requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under R315-13, which incorporates by reference 40 CFR 268, restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under R315-8 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action permits, and will be implemented through the procedures of R315-3-4.3, which incorporates by reference 40 CFR 270.42, Class 1 permit modifications; or

(4) Are promulgated under R315-7-26, which incorporates by reference 40 CFR 265.1030 through 265.1035, R315-7-27, which incorporates by reference 40 CFR 265.1050 through 265.1064 or R315-7-30, which incorporates by reference 40 CFR 265.1080 through 265.1091.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

R315-3-2. Permit Application.

2.1 GENERAL APPLICATION REQUIREMENTS

(a) Permit Application. Any person who is required to have a permit, including new applicants and persons with expiring permits, shall complete, sign and submit, a minimum of two applications to the Executive Secretary as described in R315-3-2.1 and R315-3.7. Persons currently authorized with interim status shall apply for permits when required by the Executive Secretary. Persons covered by RCRA permits by rule, R315-3-6.1, need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in R315-3-6.2. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in R315-3-6.5.

(b) Who Applies?

When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit, except that the owner shall also sign the permit application.

(c) Completeness.

(1) The Executive Secretary shall not issue a permit before receiving a complete application for a permit except for permit by rule, or emergency permit. An application for a permit is complete when the Executive Secretary receives an application form and any supplemental information which are completed to his satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in R315-3-2.1(i). The Executive Secretary may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit.

(2) The Executive Secretary shall review for completeness every permit application. Each permit application submitted by a new hazardous waste management facility, should be reviewed for completeness by the Executive Secretary in accordance with the applicable review periods of 19-6-108. Upon completing the review, the Executive Secretary shall notify the applicant in writing whether the permit application is complete. If the permit application is incomplete, the Executive Secretary shall list the information necessary to make the permit application complete. When the permit application is for an

existing hazardous waste management facility, the Executive Secretary shall specify in the notice of deficiency a date for submitting the necessary information. The Executive Secretary shall review information submitted in response to a notice of deficiency within 30 days after receipt. The Executive Secretary shall notify the applicant that the permit application is complete upon receiving this information. After the permit application is complete, the Executive Secretary may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material.

(3) If an applicant fails or refuses to correct deficiencies in the permit application, the permit application may be denied and appropriate enforcement actions may be taken under the applicable provisions of the Utah Solid and Hazardous Waste Act.

(d) Existing Hazardous Waste Management Facilities and Interim Status Qualifications.

(1) Owners and operators of existing hazardous waste management facilities shall submit part A of their permit application to the Executive Secretary no later than:

(i) Six months after the date of publication of rules which first require them to comply with the standards set forth in R315-7 or R315-14, or

(ii) Thirty days after the date they first become subject to the standards set forth in R315-7 or R315-14, whichever first occurs.

(iii) For generators generating greater than 100 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987

For facilities which had to comply with R315-7 because they handle a waste listed in EPA's May 19, 1980, Part 261 regulations, 45 FR 33006 et seq., the deadline for submitting an application was November 19, 1980. Where other existing facilities shall begin complying with R315-7 or R315-14 at a later date because of revisions to R315-1, R315-2, R315-7, or R315-14, the Executive Secretary will specify when those facilities shall submit a permit application.

(2) The Executive Secretary may extend the date by which owners and operators of specified classes of existing hazardous waste management facilities shall submit Part A of their permit application if he finds that there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and such confusion is attributed to ambiguities in R315-1, R315-2, R315-7 or R315-14 of the regulations.

(3) The Executive Secretary may by compliance order issued under 19-6-112 and 19-6-113 extend the date by which the owner and operator of an existing hazardous waste management facility must submit part A of their permit application.

(4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of the permit application. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility shall submit a part B application in accordance with the dates specified in R315-3-7.4. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under R315 that render the facility subject to the requirement to have a permit, shall submit a part B application in accordance with the dates specified in R315-3-7.4.

(5) Failure to furnish a requested part B application on time, or to furnish in full the information required by the part B application, is grounds for termination of interim status under R315-3-4.4.

(e) New Hazardous Waste Management Facilities.

(1) Except as provided in R315-3-2.1(e)(3), no person shall begin physical construction of a new hazardous waste management facility without having submitted part A and part B of the application and having received a finally effective permit.

(2) An application for a permit for a new hazardous waste management facility, including both part A and part B, may be filed any time after promulgation of applicable regulations. The application shall be filed with the Regional Administrator if at the time of application the State has not received final authorization for permitting such facility; otherwise it shall be filed with the Executive Secretary. Except as provided in R315-3-2.1(e)(3), all applications shall be submitted at least 180 days before physical construction is expected to commence.

(3) Notwithstanding R315-3-2.1(e)(1), a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the U.S. EPA Administrator under section (6)(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., and any person owning or operating such a facility may, at any time after construction or operation of the facility has begun, file an application for a permit to incinerate hazardous waste authorizing the facility to incinerate waste identified or listed in these rules.

(f) Updating permit applications.

(1) If any owner or operator of a hazardous waste management facility has filed part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Executive Secretary, within six months after the promulgation of revised regulations under 40 CFR 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the Executive Secretary no later than the effective date of regulatory provisions listing or designating wastes as hazardous in the State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with changes during interim status, R315-3-7.3. Revised part A applications necessary to comply with the provisions of interim status shall be filed with the Executive Secretary.

(2) The owner or operator of a facility who fails to comply with the updating requirements of R315-3-2.1(f)(1) does not receive interim status as to the wastes not covered by duly filed part A applications.

(g) Reapplications. Any hazardous waste management facility with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the Executive Secretary. The Executive Secretary shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(h) Recordkeeping.

Applicants shall keep records of all data used to complete permit application and any supplemental information submitted under R315-3-2.4 through R315-3-2.12, for a period of at least three years from the date the application is signed.

(i) Exposure information.

(1) Any part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill shall be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases

related to the unit. At a minimum, the information shall address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under R315-3-2.1(i)(1)(i); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) Owners and operators of a landfill or a surface impoundment who have already submitted a part B application shall submit the exposure information required in R315-3-2.1(i)(1).

(j) The Executive Secretary may require a permittee or an applicant to submit information in order to establish permit conditions under R315-3-3.3(b)(2), and R315-3-5.1(d).

2.2 SIGNATORIES TO PERMIT APPLICATIONS AND REPORTS

(a) Applications. All permit applications shall be signed as follows:

(1) For a corporation: by a principal executive officer of at least the level of vice-president;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency; by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits and other information requested by the Executive Secretary shall be signed by a person described in R315-3-2.2(a), or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in R315-3-2.2(a);

(2) The authorization specified either an individual or a position having responsibility for overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The written authorization is submitted to the Executive Secretary.

(c) Changes to authorization. If an authorization under R315-3-2.2(b) is no longer accurate because different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of R315-3-2.2(b) shall be submitted to the Executive Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d)(1) Certification. Any person signing a document under R315-3-2.2(a) or (b) shall make the following certification:

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

(2) For remedial action plans (RAPs) under R315-3-8, which incorporates by reference 40 CFR 270, subpart H, if the operator certifies according to R315-3-2.2(d)(1), then the owner may choose to make the following certification instead of the certification in R315-3-2.2(d)(1):

"Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2.4 CONTENTS OF PART A OF THE PERMIT APPLICATION

All applicants shall provide the following information to the Executive Secretary:

(a) The activities conducted by the applicant which require it to obtain a hazardous waste operation permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(d) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(e) The name, address, and telephone number of the owner of the facility.

(f) Whether the facility is located on Indian lands.

(g) An indication of whether the facility is new or existing and whether it is a first or revised application.

(h) For existing facilities, (1) a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and (2) photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.

(i) A description of the processes to be used for treating, storing, or disposing of hazardous waste, and the design capacity of these items.

(j) A specification of the hazardous wastes or hazardous waste mixtures listed or designated under R315-2 to be treated, stored, or disposed at the facility, an estimate of the quantity of these wastes to be treated, stored, or disposed annually, and a general description of the processes to be used for these wastes.

(k) A listing of all permits or construction approvals received or applied for under any of the following programs:

(1) Hazardous Waste Management program under the Utah Solid and Hazardous Waste Act or RCRA.

(2) Underground Injection Control (UIC) program under Safe Drinking Water Act (SDWA), 42 U.S.C. 300f et seq.

(3) NPDES program under Clean Water Act (CWA), 33 U.S.C. 1251 et seq.

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act, 42 U.S.C. 7401 et seq.

(5) Nonattainment program under the Clean Air Act.

(6) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(7) Dredge or fill permits under section 404 of the Clean Water Act.

(8) Other relevant environmental permits, including State and Federal permits or permits.

(l) A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.

(m) A brief description of the nature of the business.

(n) For hazardous debris, a description of the debris

category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

(o) The legal description of the facility with reference to the land survey of the State of Utah.

2.5 GENERAL INFORMATION REQUIREMENTS FOR PART B

(a) Part B information requirements presented below reflect the standards promulgated in R315-8. These information requirements are necessary in order for the Executive Secretary to determine compliance with the standards of R315-8. If owners and operators of hazardous waste management facilities can demonstrate that the information prescribed in part B cannot be provided to the extent required, the Executive Secretary may make allowance for submission of the information on a case-by-case basis. Information required in part B shall be submitted to the Executive Secretary and signed in accordance with requirements in R315-3-2.2. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer. For post-closure permits, only the information specified in R315-3-2.19 is required in part B of the permit application.

(b) General information requirements. The following information is required for all hazardous waste management facilities, except as R315-8-1 provides otherwise:

(1) A general description of the facility,

(2) Chemical and physical analyses of the hazardous wastes and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with R315-8.

(3) A copy of the waste analysis plan required by R315-8-2.4, which incorporates by reference 40 CFR 264.13 (b) and, if applicable 40 CFR 264.13(c).

(4) A description of the security procedures and equipment required by R315-8-2.5, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by R315-8-2.6(b). Include, where applicable, as part of the inspection schedule, specific requirements in R315-8-9.5, R315-8-10, which incorporates by reference the specific provisions of 40 CFR 264.193(i) and 264.195, R315-8-11.3, R315-8-12.3, R315-8-13.4, R315-8-14.3, and R315-8-16, which incorporates by reference 40 CFR 264.602, R315-8-17, which incorporates by reference 40 CFR 264.1033, R315-8-18, which incorporates by reference 40 CFR 264.1052, 264.1053, and 264.1058, and R315-8-22, which incorporates by reference 40 CFR 264.1084, 264.1085, 264.1086, and 264.1088.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of R315-8-3.

(7) A copy of the contingency plan required by R315-8-4. Include, where applicable, as part of the contingency plan, specific requirements in R315-8-11.8 and R315-8-10, which incorporates by reference 40 CFR 264.200.

(8) A description of procedures, structures, or equipment used at the facility to:

(i) Prevent hazards in unloading operations, for example, ramps, special forklifts;

(ii) Prevent run-off from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding, for example, berms, dikes, trenches;

(iii) Prevent contamination of water supplies;

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste, for example, protective clothing; and

(vi) Prevent releases to the atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with R315-8-2.8 including documentation demonstrating compliance with R315-8-2.8(c).

(10) Traffic pattern, estimated volume, number, types of vehicles and control, for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load bearing capacity; show traffic control signals.

(11) Facility location information:

(i) In order to determine the applicability of the seismic standard R315-8-2.9(a), the owner or operator of a new facility shall identify the political jurisdiction, e.g., county, township, or election district, in which the facility is proposed to be located. If the county or election district is not listed in R315-50-11, no further information is required to demonstrate compliance with R315-8-2.9(a).

(ii) If the facility is proposed to be located in an area listed in R315-50-11, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided shall be of a quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted shall show that either:

(A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault, which have displacement in Holocene time, within 3,000 feet of a facility are present, based on data from:

(I) Published geologic studies,

(II) Aerial reconnaissance of the area within a five mile radius from the facility,

(III) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

(IV) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

(B) If faults, to include lineations, which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of the portions of the facility, data shall be obtained from a subsurface exploration, trenching, of the area within a distance no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. The trenching shall be performed in a direction that is perpendicular to known faults, which have had displacement in Holocene time, passing within 3,000 feet of the portions of the facility where treatment, storage, and disposal of hazardous waste will be conducted. The investigation shall document with supporting maps and other analyses, the location of any faults found. The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.

(iii) Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year floodplain. This identification shall indicate the source of data for the determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors, e.g., wave action, which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the

Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100-year floodplain. However, where the FIA map excludes an area, usually areas of the floodplain less than 200 feet in width, these areas shall be considered and a determination made as to whether they are in the 100-year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator shall use equivalent mapping techniques to determine whether the facility is within the 100-year floodplain, and if so located, what the 100-year flood elevation would be.

(iv) Owners and operators of facilities located in the 100-year floodplain shall provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood.

(B) Structural or other engineering studies showing the design of operational units, e.g., tanks, incinerators, and flood protection devices, e.g., floodwalls, dikes, at the facility and how these will prevent washout.

(C) If applicable, and in lieu of R315-3-2.5(b)(11)(iv)(A) and (B), a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(I) Timing of the movement relative to flood levels, including estimated time to move the waste, to show that the movement can be completed before floodwaters reach the facility.

(II) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the rules under R315-3, R315-7, R315-8, and R315-14.

(III) The planned procedures, equipment, and personnel to be used and the means to ensure that the resources will be available in time for use.

(IV) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with R315-8-2.9(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the hazardous waste management facility in a safe manner as required to demonstrate compliance with R315-8-2.7. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in R315-8-2.7(a)(3).

(13) A copy of the closure plan and where applicable, the post-closure plan required by R315-8-7 which incorporates by reference 40 CFR 264.112, and 264.118, and R315-8-10 which incorporates by reference 40 CFR 264.197. Include where applicable as part of the plans specific requirements in R315-8-9.9, R315-8-10, which incorporates by reference 40 CFR 264.197, R315-8-11.5, R315-8-12.6, R315-8-13.8, R315-8-14.5, R315-8-15.8, and R315-8-16, which incorporates by reference 40 CFR 264.601 and 264.603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under R315-8-7 which incorporates by reference 40 CFR 264.119, have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with R315-8-8 which incorporates by reference 40 CFR 264.142, and a copy of the documentation required to demonstrate financial assurance under R315-8-8 which incorporates by reference 40 CFR 264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with R315-8-8, which incorporates by reference 40 CFR 264.144, plus a copy of the financial assurance mechanism adopted in compliance with R315-8-8.3 documentation required to demonstrate financial assurance under R315-8-8, which incorporates by reference 40 CFR 264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of R315-8-8, which incorporates by reference 40 CFR 264.147. For a new facility, documentation showing the amount of insurance meeting the specification of R315-8-8, which incorporates by reference 40 CFR 264.147(a), and if applicable 40 CFR 264.147(b), also incorporated by reference in R315-8-8, that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in 40 CFR 264.147(c), incorporated by reference in R315-8-8.

(18) Where appropriate, proof of coverage by a financial mechanism as required in R315-8-8, which incorporates by reference 40 CFR 264.149 and 150.

(19) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters, one inch, equal to not more than 61.0 meters, 200 feet. For large hazardous waste management facilities, the Executive Secretary will allow the use of other scales on a case-by-case basis. Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters, five feet, if relief is greater than 6.1 meters, 20 feet, or an interval of 0.6 meters, two feet, if relief is less than 6.1 meters, 20 feet. Owners and operators of hazardous waste management facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

(i) Map scale and date.

(ii) 100-year floodplain area.

(iii) Surface waters including intermittent streams.

(iv) Surrounding land uses, residential, commercial, agricultural, recreational.

(v) A wind rose, i.e., prevailing windspeed and direction.

(vi) Orientation of map, north arrow.

(vii) Legal boundaries of the hazardous waste management facility site.

(viii) Access control, fences, gates.

(ix) Injection and withdrawal wells both on-site and off-site.

(x) Buildings; treatment, storage, or disposal operations; or other structures, recreation areas, run-off control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.

(xi) Barriers for drainage or flood control.

(xii) Location of operational units within hazardous waste management facility site, where hazardous waste is, or will be, treated, stored, or disposed, include equipment cleanup areas.

(20) Applicants may be required to submit such information as may be necessary to enable the Executive Secretary and the Board to carry out duties under State laws and Federal laws as specified in 40 CFR 270.3.

(21) For land disposal facilities, if a case-by-case extension has been approved under R315-13, which incorporates by reference 40 CFR 268.5, or a petition has been approved under R315-13, which incorporates by reference 40 CFR 268.6, a copy of the notice of approval for the extension is

required.

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comment or materials submitted at the meeting, as required under R315-4-2.31(c).

(c) Additional information requirements.

The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as otherwise provided in R315-8-6.1(b).

(1) A summary of the groundwater monitoring data obtained during the interim status period under R315-7-13 where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including groundwater flow direction and rate, and the basis for the identification, i.e., the information obtained from hydrogeologic investigations of the facility area.

(3) On the topographic map required under R315-3-2.5(b)(19), a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined in R315-8-6.6, the proposed location of groundwater monitoring wells as required by R315-8-6.8 and, to the extent possible, the information required in R315-3-2.5(c)(2);

(4) A description of any plume of contamination that has entered the groundwater from a regulated unit at the time that the application is submitted that:

(i) Delineates the extent of the plume on the topographic map required under R315-3-2.5(b)(19);

(ii) Identifies the concentration of each constituent listed in R315-50-14, which incorporates by reference Appendix IX of 40 CFR 264, throughout the plume or identifies the maximum concentrations of each constituent listed in R315-50-14 in the plume.

(5) Detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of R315-8-6.8.

(6) If the presence of hazardous constituents has not been detected in the groundwater at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of R315-8-6.9. This submission shall address the following items as specified under R315-8-6.9:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the groundwater;

(ii) A proposed groundwater monitoring system;

(iii) Background values for each proposed monitoring parameters or constituent, or procedures to calculate the values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

(7) If the presence of hazardous constituents has been detected in the groundwater at the point of compliance at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of R315-8-6.10. Except as provided in R315-8-6.9(g)(5), the owner or operator shall also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of R315-8-6.11, unless the owner or operator obtains written authorization in advance from the Executive Secretary to submit a proposed permit schedule for submittal of a plan. To demonstrate compliance with R315-8-6.10, the owner or operator shall address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated groundwater, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with R315-8-6.8 and R315-8-6.10;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in R315-8-6.5(a) including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of R315-8-6.8, and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating groundwater monitoring data.

(8) If hazardous constituents have been measured in the groundwater which exceed the concentration limits established under R315-8-6.5 Table 1, or if groundwater monitoring conducted at the time of permit application under R315-8-6.1 through R315-8-6.5 at the waste boundary indicates the presence of hazardous constituents from the facility in groundwater over background concentrations, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of R315-8-6-11. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Executive Secretary that alternate concentration limits will protect human health and the environment after considering the criteria listed in R315-8-6.5(b). An owner or operator who is not required to establish a corrective action program for this reason shall instead submit sufficient information to establish a compliance monitoring program which meets the requirements of R315-8-6.10 and R315-3-2.5(c)(6). To demonstrate compliance with R315-8-6.11, the owner or operator shall address, at a minimum, the following items:

(i) A characterization of the contaminated groundwater, including concentration of hazardous constituents;

(ii) The concentration limit for each hazardous constituent found in the groundwater as set forth in R315-8-6.5;

(iii) Detailed plans and engineering report describing the corrective action to be taken; and

(iv) A description of how the groundwater monitoring program will assess the adequacy of the corrective action.

(v) The permit may contain a schedule for submittal of the information required in R315-3-2.5(c)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Executive Secretary prior to submittal of the complete permit application.

(9) An intended schedule of construction shall be submitted with the permit application and will be incorporated into the permit as an approval condition. Facility permits shall be reviewed by the Executive Secretary no later than 18 months from the date of permit issuance, and periodically thereafter, to determine if a program of continuous construction is proceeding. Failure to maintain a program of continuous construction may result in revocation of the permit.

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under R315-3-2.5(b)(19);

(ii) Designation of type of unit;

(iii) General dimensions and structural description, supply any available drawings;

(iv) When the unit was operated; and

(v) Specification of all wastes that have been managed at

the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units shall submit all available information pertaining to any release of hazardous wastes or hazardous constituents from the unit or units.

(3) The owner or operator shall conduct and provide the results of sampling and analysis of groundwater, land surface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Executive Secretary ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.

2.6 SPECIFIC PART B INFORMATION REQUIREMENTS FOR CONTAINERS

Facilities that store containers of hazardous waste, except as otherwise provided in R315-8-9.1, shall provide the following additional information:

(a) A description of the containment system to demonstrate compliance with R315-8-9.6. Show at least the following:

(1) Basic design parameters, dimensions, and materials of construction.

(2) How the design promotes drainage or how containers are kept from contact with standing liquids in the containment system.

(3) Capacity of the containment system relative to the number and volume of containers to be stored.

(4) Provisions for preventing or managing run-on.

(5) How accumulated liquids can be analyzed and removed to prevent overflow.

(b) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with R315-8-9.6(c) including:

(1) Test procedures and results or other documentation or information to show that the wastes do not contain free liquids; and

(2) A description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.

(c) Sketches, drawings, or data demonstrating compliance with R315-8-9.7, location of buffer zone and containers holding ignitable or reactive wastes, and R315-8-9.8(c), location of incompatible wastes, where applicable.

(d) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with R315-8-9.8(a) and (b) and R315-8-2.8(b) and (c).

(e) Information on air emission control equipment as required in R315-3-2.18, which incorporates by reference 40 CFR 270.27.

2.7 SPECIFIC PART B INFORMATION REQUIREMENTS FOR TANK SYSTEMS

For facilities that use tanks to store or treat hazardous waste, the requirements of 40 CFR 270.16, 1996 ed., are adopted and incorporated by reference.

2.8 SPECIFIC PART B INFORMATION REQUIREMENTS FOR SURFACE IMPOUNDMENTS

Facilities that store, treat, or dispose of hazardous waste in surface impoundments, except as otherwise provided in R315-8-1.1, shall provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each surface impoundment;

(b) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-2.10, R315-8-11.2, R315-8-11.9, R315-8-11.10, addressing the following items:

(1) The liner system, except for an existing portion of a surface impoundment. If an exemption from the requirement for a liner is sought as provided by R315-8-11.2(b), submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(2) The double liner and leak, leachate, detection, collection, and removal system, if the surface impoundment must meet the requirements of R315-8-11.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-11.2(d), (e), or (f), submit appropriate information;

(3) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(4) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(5) Proposed action leakage rate, with rationale, if required under R315-8-11.9, and response action plan, if required under R315-8-11.10;

(6) Prevention of overtopping; and

(7) Structural integrity of dikes.

(c) A description of how each surface impoundment, including the double liner, leak detection system, cover system, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of R315-8-11.3(a), (b), and (d). This information should be included in the inspection plan submitted under R315-3-2.5(b)(5);

(d) A certification by a qualified engineer which attests to the structural integrity of each dike, as required under R315-8-11.3(c). For new units, the owner or operator shall submit a statement by a qualified engineer that he will provide a certification upon completion of construction in accordance with the plans and specifications;

(e) A description of the procedure to be used for removing a surface impoundment from service, as required under R315-8-11.4(b) and (c). This information should be included in the contingency plan submitted under R315-3-2.5(b)(7);

(f) A description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under R315-8-11.5(a)(1). For any wastes not to be removed from the unit upon closure, the owner or operator shall submit detailed plans and an engineering report describing how R315-8-11.5(a)(2) and (b) will be complied with. This information should be included in the closure plan, and, where applicable, the post-closure plan submitted under R315-3-2.5(b)(13);

(g) If ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how R315-8-11.6 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials will be placed in a surface impoundment, an explanation of how R315-8-11.7 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-11.8. This submission shall address the following items as specified in R315-8-11.8:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or

monitoring techniques.

(j) Information on air emission control equipment as required by R315-3-2.18, which incorporates by reference 40 CFR 270.27.

2.9 SPECIFIC PART B INFORMATION REQUIREMENTS FOR WASTE PILES

Facilities that store or treat hazardous waste in waste piles, except as otherwise provided in R315-8-1, shall provide the following additional information:

(a) A list of hazardous wastes placed or to be placed in each waste pile;

(b) If an exemption is sought to R315-8-12.2 and R315-8-6 as provided by R315-8-12.1(c) or R315-8-6(b)(2), an explanation of how the standards of R315-8-12.1(c) will be complied with or detailed plans and an engineering report describing how the requirements of R315-8-6(b)(2) will be met.

(c) Detailed plans and an engineering report describing how the waste pile is or will be designed, constructed, operated and maintained to meet the requirements of R315-8-2.10, R315-8-12.2, R315-8-12.8, and R315-8-12.9, addressing the following items:

(1)(i) The liner system, except for an existing portion of a waste pile, if the waste pile must meet the requirements of R315-8-12.2(a). If an exemption from the requirement for a liner is sought as provided by R315-8-12.2(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner and leak, leachate, detection, collection, and removal system, if the waste pile must meet the requirements of R315-8-12.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-12.2(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance (CQA) plan if required under R315-8-2.10;

(v) Proposed action leakage rate, with rationale, if required under R315-8-12.8, and response action plan, if required under R315-8-12.9;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(d) A description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of R315-8-12.3(a), (b), and (c). This information shall be included in the inspection plan submitted under R315-3-2.5(b)(5);

(e) If treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;

(f) If ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of R315-8-12.4 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be placed in a waste pile, an explanation of how R315-8-12.5 will be complied with;

(h) A description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under R315-8-12.6(a). For any waste not to be removed from the waste pile upon closure, the owner or operator shall submit detailed plans and an engineering report describing how R315-8-14.5(a) and (b) will be complied with. This information should be included in the closure plan, and, where applicable, the post-closure plan submitted under R315-3-2.5(b)(13);

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026 and F027 describing how a waste pile that is not enclosed, as defined in R315-8-12.1(c) is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-12.7. This submission shall address the following items as specified in R315-8-12.7:

(1) The volume, physical, and chemical characteristics of the wastes to be disposed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

2.10 SPECIFIC PART B INFORMATION REQUIREMENTS FOR INCINERATORS

For facilities that incinerate hazardous waste, except as R315-8-15.1 and R315-3-2.10(e) provides otherwise, the applicant shall fulfill the requirements of R315-3-2.10(a), (b), or (c).

(a) When seeking exemption under R315-8-15.1(b) or (c) (ignitable, corrosive or reactive wastes only):

(1) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Documentation that the waste is listed as a hazardous waste in R315-2-10 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f)(1)(iv) and (v), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) Documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9; or

(4) Documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in R315-2-9(f)(i), (ii), (iii), (vi), (vii), or (viii) and that it will not be burned when other hazardous wastes are present in the combustion zone; or

(b) Submit a trial burn plan or the results of the trial burn, including all required determinations, in accordance with R315-3-6.3; or

(c) In lieu of a trial burn, the applicant may submit the following information:

(1) An analysis of each waste or mixture of wastes to be burned including:

(i) Heat value of the waste in the form and composition in which it will be burned.

(ii) Viscosity, if applicable, or description of physical form of the waste.

(iii) An identification of any hazardous organic constituents listed in R315-50-10, which incorporates by reference 40 CFR part 261 Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the

Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, or their equivalent.

(iv) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(v) A quantification of those hazardous constituents in the waste which may be designated as POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standard in R315-8-15.4.

(2) A detailed engineering description of the incinerator, including:

(i) Manufacturer's name and model number of incinerator.

(ii) Type of incinerator.

(iii) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(iv) Description of auxiliary fuel system, type/feed.

(v) Capacity of prime mover.

(vi) Description of automatic waste feed cutoff system(s).

(vii) Stack gas monitoring and pollution control monitoring system.

(viii) Nozzle and burner design.

(ix) Construction materials.

(x) Location and description of temperature, pressure, and flow indicating devices and control devices.

(3) A description and analysis of the waste to be burned compared with the waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in R315-3-2.10(c)(1). This analysis should specify the POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

(4) The design and operating conditions of the incinerator unit to be used, compared with that for which comparative burn data are available.

(5) A description of the results submitted from any previously conducted trial burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards in R315-8-15.4.

(ii) Methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide, and an appropriate indicator of combustion gas velocity, including a statement concerning the precision and accuracy of this measurement,

(6) The expected incinerator operation information to demonstrate compliance with R315-8-15.4 and R315-8-15.6 including:

(i) Expected carbon monoxide (CO) level in the stack exhaust gas.

(ii) Waste feed rate.

(iii) Combustion zone temperature.

(iv) Indication of combustion gas velocity.

(v) Expected stack gas volume, flow rate, and temperature.

(vi) Computed residence time for waste in the combustion zone.

(vii) Expected hydrochloric acid removal efficiency.

(viii) Expected fugitive emissions and their control procedures.

(ix) Proposed waste feed cut-off limits based on the identified significant operating parameters.

(7) Any supplemental information as the Executive Secretary finds necessary to achieve the purposes of this paragraph.

(8) Waste analysis data, including that submitted in R315-3-2.10(c)(1), sufficient to allow the Executive Secretary to specify as permit Principal Organic Hazardous Constituents (POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Executive Secretary shall approve a permit application without a trial burn if he finds that:

(1) The wastes are sufficiently similar; and

(2) The incinerator units are sufficiently similar, and the data from other trial burns are adequate to specify, under R315-8-15.6, operating conditions that will ensure that the performance standards in R315-8-15.4 will be met by the incinerator.

(e) When an owner or operator demonstrates compliance with the air emission standards and limitations in R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of R315-3-2.10 do not apply, except those provisions the Executive Secretary determines are necessary to ensure compliance with R315-8-15.6(a) and R315-8-15.6(c) if you elect to comply with R315-3-9(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Executive Secretary may apply the provisions of R315-3-2.10, on a case-by-case basis, for purposes of information collection in accordance with R315-3-2.1(j) and R315-3-3.3(b)(2).

2.11 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LAND TREATMENT FACILITIES

Facilities that use land treatment to dispose of hazardous waste, except as otherwise provided in R315-8-1.1, shall provide the following additional information:

(a) A description of plans to conduct a treatment demonstration as required under R315-8-13.3. The description shall include the following information:

(1) The wastes for which the demonstration will be made and the potential hazardous constituents in the wastes;

(2) The data sources to be used to make the demonstration, e.g., literature, laboratory data, field data, or operating data;

(3) Any specific laboratory or field test that will be conducted, including:

(i) The type of test, e.g., column leaching, degradation;

(ii) Materials and methods, including analytical procedures;

(iii) Expected time for completion;

(iv) Characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions, and operating practices;

(b) A description of a land treatment program, as required under R315-8-13.2. This information shall be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program shall address the following items:

(1) The wastes to be land treated;

(2) Design measures and operating practices necessary to maximize treatment in accordance with R315-8-13.4(a) including:

(i) Waste application method and rate;

(ii) Measures to control soil pH;

(iii) Enhancement of microbial or chemical reactions;

(iv) Control of moisture content.

(3) Provisions for unsaturated zone monitoring including:

(i) Sampling equipment, procedures and frequency;

(ii) Procedures for selecting sampling locations;

(iii) Analytical procedures;

(iv) Chain of custody control;

(v) Procedures for establishing background values;

(vi) Statistical methods for interpreting results;

(vii) The justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for the selection in R315-8-

13.6(a);

(4) A list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land treated based on waste analysis performed pursuant to R315-8-2.4, which incorporates by reference 40 CFR 264.13;

(5) The proposed dimensions of the treatment zone;

(c) A description of how the unit is or will be designed, constructed, operated, and maintained in order to meet the requirements of R315-8-13.4. This submission shall address the following items:

(1) Control of run-on;

(2) Collection and control of run-off;

(3) Minimization of run-off of hazardous constituents from the treatment zone;

(4) Management of collection and holding facilities associated with run-on and run-off control systems;

(5) Periodic inspection of the unit. This information should be included in the inspection plan submitted under R315-3-2.5(b)(5).

(6) Control of wind dispersal of particulate matter, if applicable;

(d) If food-chain crops are to be grown in or on the treatment zone of the land treatment unit, a description of how the demonstration required under R315-8-13.5(a) will be conducted including:

(1) Characteristics of the food-chain crop for which the demonstration will be made;

(2) Characteristics of the waste, treatment zone, and waste application method and rate to be used in the demonstration;

(3) Procedures for crop growth, sample collection, sample analysis, and data evaluation;

(4) Characteristics of the comparison crop including the location and conditions under which it was or will be grown.

(e) If food-chain crops are to be grown, and cadmium is present in the land treated waste, a description of how the requirements of R315-8-13.5(b) will be complied with;

(f) A description of the vegetative cover to be applied to closed portions of the facility, and a plan for maintaining such cover during the post-closure care period, as required under R315-8-13.8(a)(8) and R315-8-13.8(c)(2). This information should be included in the closure plan, and, where applicable, the post-closure care plan submitted under R315-3-2.5(b)(13).

(g) If ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of R315-8-13.9 will be complied with;

(h) If incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how R315-8-13.10 will be complied with.

(i) A waste management plan for EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 describing how a land treatment facility is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-13.11. This submission shall address the following items as specified in R315-8-13.11:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

2.12 SPECIFIC PART B INFORMATION REQUIREMENTS FOR LANDFILLS

Facilities that dispose of hazardous waste in landfills, except as otherwise provided in R315-8-1.1, shall provide the following additional information:

(a) A list of the hazardous wastes placed or to be placed in each landfill or landfill cell;

(b) Detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated, and maintained to comply with the requirements of R315-8-2.10, R315-8-14.2., R315-8-14.3, and R315-8-14.12, addressing the following items:

(1)(i) The liner system, except for an existing portion of a landfill, if the landfill must meet the requirements of R315-8-14.2(a). If an exemption from the requirement for a liner is sought as provided by R315-8-14.2(b), submit detailed plans, and engineering and hydrogeological reports, as appropriate, describing alternate designs and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the groundwater or surface water at any future time;

(ii) The double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of R315-8-14.2(c). If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternative design is sought as provided by R315-8-14.2(d), (e), or (f), submit appropriate information;

(iii) If the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(iv) The construction quality assurance, CQA, plan if required under R315-8-2.10;

(v) Proposed action leakage rate, with rationale, if required under R315-8-14.12, and response action plan, if required under R315-8-14.3;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable.

(c) A description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of R315-8-14.3(a), (b), and (c). This information shall be included in the inspection plan submitted under R315-3-2.5(b)(5);

(d) A description of how each landfill, including the liner and cover systems, will be inspected in order to meet the requirements of R315-8-14.3(a) and (b). This information should be included in the inspection plan submitted under R315-3-2.5(b)(5).

(e) Detailed plans and engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with R315-8-14.5(a), and a description of how each landfill will be maintained and monitored after closure in accordance with R315-8-14.5(b). This information should be included in the closure and post-closure plans submitted under R315-3-2.5(b)(13).

(f) If ignitable or reactive wastes will be landfilled, an explanation of how the requirements of R315-8-14.6 will be complied with;

(g) If incompatible wastes, or incompatible wastes and materials will be landfilled, an explanation of how R315-8-14.7 will be complied with;

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of R315-8-14.8(a) will be complied with;

(i) If containers of hazardous waste are to be landfilled, an explanation of how the requirements of R315-8-14.9 or R315-8-14.10 as applicable, will be complied with.

(j) A waste management plan for EPA Hazardous Waste

Nos. F020, F021, F022, F023, F026, and F027 describing how a landfill is or will be designed, constructed, operated, and maintained to meet the requirements of R315-8-14.11. This submission shall address the following items as specified in R315-8-14.11:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

2.13 SPECIFIC PART B INFORMATION REQUIREMENTS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

For facilities that burn hazardous wastes in boilers and industrial furnaces which R315-14-7 applies, which incorporates by reference 40 CFR subpart H, 266.100 through 266.112, the requirements of 40 CFR 270.22, 2002 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

2.14 SPECIFIC PART B INFORMATION REQUIREMENTS FOR MISCELLANEOUS UNITS

Facilities that treat, store or dispose of hazardous waste in miscellaneous units except as otherwise provided in R315-8-16, which incorporates by reference 40 CFR 264.600, shall provide the following additional information:

(a) A detailed description of the unit being used or proposed for use, including the following:

(1) Physical characteristics, materials of construction, and dimensions of the unit;

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of R315-8-16, which incorporates by reference 40 CFR 264.601 and 264.602; and

(3) For disposal units, a detailed description of the plans to comply with the post-closure requirements of R315-8-16, which incorporates by reference 40 CFR 264.603.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601. If the applicant can demonstrate that he does not violate the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601 and the Executive Secretary agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

(c) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of these exposures;

(d) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data;

(e) Any additional information determined by the Executive Secretary to be necessary for evaluation of compliance of the unit with the environmental performance standards of R315-8-16, which incorporates by reference 40 CFR 264.601.

2.15 SPECIFIC PART B INFORMATION REQUIREMENTS FOR PROCESS VENTS

For facilities that have process vents to which R315-8-17 applies, which incorporates by reference 40 CFR subpart AA of 264, the requirements of 40 CFR 270.24, 1991 ed., regarding information requirements for process vents are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

2.16 SPECIFIC PART B INFORMATION REQUIREMENTS FOR EQUIPMENT

For facilities that have equipment to which R315-8-18 applies, which incorporates by reference 40 CFR subpart BB of 264, the requirements of 40 CFR 270.25, 1991 ed., regarding information requirements for equipment are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Regional Administrator."

2.17 SPECIFIC PART B INFORMATION REQUIREMENTS FOR DRIP PADS

For facilities that have drip pads to which R315-8-19 applies, which incorporates by reference 40 CFR subpart W, 264.570 through 264.575, the requirements of 40 CFR 270.26, 1991 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for "Director."

2.18 SPECIFIC PART B INFORMATION REQUIREMENTS FOR AIR EMISSION CONTROLS FOR TANKS, SURFACE IMPOUNDMENTS, AND CONTAINERS

The requirements as found in 40 CFR 270.27 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference.

2.19 PART B INFORMATION REQUIREMENTS FOR POST-CLOSURE PERMITS

For post-closure permits, the owner or operator is required to submit only the information specified in R315-3-2.5(b)(1), (4), (5), (6), (11), (13), (14), (16), (18), (19), and R315-3-2.5(c) and (d), unless the Executive Secretary determines that additional information from R315-3-2.5, R315-3-2.7, which incorporates by reference 40 CFR 270.16, R315-3-2.8, R315-3-2.9, R315-3-2.11, or R315-3-2.12 is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in R315-3-1.3(e)(7).

2.20 PERMIT DENIAL

The Executive Secretary may, pursuant to the procedures in R315-4, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

R315-3-3. Permit Conditions.

3.1 CONDITIONS APPLICABLE TO PERMITS

The following conditions apply to all permits. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation of these rules shall be given in the permit.

(a) Duty to comply. The permittee shall comply with all conditions of this permit, except that the permittee need not comply with the conditions of this permit to the extent and for the duration any noncompliance is authorized in an emergency permit. (See R315-3-6.2). Any plan noncompliance except under the terms of an emergency permit, constitutes a violation of the Utah Solid and Hazardous Waste Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit.

(c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the approved activity in order to maintain compliance with the conditions of this permit.

(d) In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out all measures as are reasonable to prevent significant adverse impact on human health or the environment.

(e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) Permit actions. This permit may be modified, revoked and reissued, or terminated in accordance with the provisions of R315-3-4.2 or R315-4.4 and the procedures of R315-4-1.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification or planned changes or anticipated noncompliance, does not stay any permit condition.

(g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) Duty to provide information. The permittee shall furnish to the Executive Secretary within a reasonable time, any relevant information which the Executive Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Executive Secretary upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Executive Secretary, the Board, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Utah Solid and Hazardous Waste Act, any substances or parameters at any location.

(j) Monitoring and records.

(1) Sample and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by R315-8-5.3, which incorporates by reference 40 CFR 264.73(b)(9), and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Executive Secretary and the Board at any time. The permittee shall maintain records of all groundwater quality and groundwater surface elevations, for the active life of the facility, and for the post-closure care period as well.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of all analyses.

(k) Signatory requirement. All applications, reports, or information submitted to the Executive Secretary shall be signed and certified, see R315-3-2.2.

(l) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Executive Secretary as soon as possible of any planned physical alterations or additions to the approved facility.

(2) Anticipated noncompliance. The permittee shall give advance notice to the Executive Secretary of any planned changes in the approved facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store, or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in R315-3-4.3, which incorporates by reference 40 CFR 270.42, until:

(i) The permittee has submitted to the Executive Secretary by certified mail or hand delivery a letter signed by the permittee and a registered professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(ii)(A) The Executive Secretary or the Board has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or

(B) Within 15 days of the date of submission of the letter in R315-3-3.1(l)(2)(i), the permittee has not received notice from the Executive Secretary or Board of their intent to inspect, prior inspection is waived and the permittee may commence treatment, storage, or disposal of hazardous waste.

(3) Transfers. The permit is not transferable to any person except after notice to the Executive Secretary. The Executive Secretary may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate any other requirements as may be necessary. See R315-3-4.1.

(4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting. See R315-9 for Emergency Controls.

(i) The permittee shall report any noncompliance which may endanger health or the environment orally within 24 hours from the time the permittee becomes aware of the circumstances, including:

(A) Information concerning release of hazardous waste that may cause an endangerment to public drinking water supplies.

(B) Any information of a release of hazardous waste or of a fire or explosion from the hazardous waste management facility, which could threaten the environment or human health outside the facility.

(ii) The description of the occurrence and its cause shall include:

(A) Name, address, and telephone number of the owner or operator;

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

(C) Date, time, and type of incident;

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

(E) The extent of injuries, if any;

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

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

(iii) A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The Executive Secretary may waive the five-day written notice requirement in favor of a written report within 15 days.

(7) Manifest discrepancy report. If a significant discrepancy in a manifest is discovered, the permittee shall attempt to reconcile the discrepancy. If not resolved within fifteen days, the permittee shall submit a letter report, including a copy of the manifest, to the Executive Secretary. (See R315-8-5.4)

(8) Unmanifested waste report. This report shall be submitted to the Executive Secretary within 15 days of receipt of unmanifested wastes.

(9) Biennial report. A biennial report shall be submitted covering facility activities during odd numbered calendar years.

(10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under R315-3-3.1(l)(4), (5), and (6), at the time monitoring reports are submitted. The reports shall contain the information listed in R315-3-3.1(l)(6).

(11) Other information. Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Executive Secretary, he shall promptly submit all facts or information.

(m) Information repository. The Executive Secretary may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in R315-4-2.33(b). The information repository will be governed by the provisions in R315-4-2.33 (c) through (f).

3.2 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(b) Required monitoring including type, intervals, and frequency sufficient yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in R315-8 and R315-14. Reporting shall be no less frequent than specified in R315-8 and R315-14.

3.3 ESTABLISHING PERMIT CONDITIONS

In addition to the conditions established, each permit shall include:

(a) A list of the wastes or classes of wastes which will be treated, stored, or disposed of at the facility, and a description of the processes to be used for treating, storing, and disposing of these hazardous wastes at the facility including the design capacities of each storage, treatment, and disposal unit. Except in the case of containers, the description shall identify the particular wastes or classes of wastes which will be treated, stored, or disposed of in particular equipment or locations, e.g., "Halogenated organics may be stored in Tank A", and "Metal hydroxide sludges may be disposed of in landfill cells B, C, and D", and

(b)(1) Each permit shall include conditions necessary to achieve compliance with the Utah Solid and Hazardous Waste Act and these rules, including each of the applicable requirements specified in R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14, which incorporates by reference 40 CFR 266. In satisfying this provision, the Executive Secretary may incorporate applicable requirements of R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14, which incorporates by reference 40 CFR 266, directly into the permit or establish other permit conditions that are based on these rules.

(2) Each permit issued under the Utah Solid and Hazardous Waste Act shall contain terms and conditions as the Executive Secretary determines necessary to protect human health and the environment.

(c) New or reissued permits, and to the extent allowed under R315-3-4.2, modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in R315-3-3.2 and R315-3-3.3.

(d) Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable requirements shall be given in the permit.

3.4 SCHEDULES OF COMPLIANCE

(a) The permit may, when appropriate, specify a schedule of compliance leading to compliance with these rules.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.

(2) Interim dates. Except as provided in R315-3-3.4(b)(1)(ii), if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Executive Secretary or Board or both in writing, of its compliance or noncompliance with the interim or final requirement, or submit progress reports if R315-3-3.4(a)(2)(ii) is applicable.

(b) Alternative schedules of permit compliance. An applicant or permittee may cease conducting regulated activities, by receiving a terminal volume of hazardous waste, and for treatment and storage facilities, closing pursuant to applicable requirements; and for disposal facilities, closing and conducting post-closure care pursuant to applicable requirement, rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to permit termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease

conducting regulated activities, the Executive Secretary may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements.

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under R315-3-3.4(b)(3)(i) it shall follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Executive Secretary, such as resolution of the board of directors of a corporation.

R315-3-4. Changes to Permit.

4.1 TRANSFER OF PERMITS

(a) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under R315-3-4.1(b) or R315-3-4.2(b)(2) to identify the new permittee and incorporate such other requirements as may be necessary under the appropriate Act.

(b) Changes in the ownership or operational control of a facility may be made as a Class 1 modification with prior written approval of the Executive Secretary in accordance with R315-3-4.3, which incorporates by reference 40 CFR 270.42. The new owner or operator shall submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees shall also be submitted to the Executive Secretary. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of R315-8-8, which incorporates by reference 40 CFR 264, subpart H, until the new owner or operator has demonstrated that he is complying with the requirements of that subpart. The new owner or operator shall demonstrate compliance with R315-8-8, which incorporates by reference 40 CFR 264, subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Executive Secretary by the new owner or operator of compliance with R315-8-8, which incorporates by reference 40 CFR 264, subpart H, the Executive Secretary shall notify the old owner or operator that he no longer needs to comply with R315-8-8, which incorporates by reference 40 CFR 264, subpart H as of the date of demonstration.

4.2 MODIFICATION OR REVOCATION AND REISSUANCE OF PERMITS

When the Executive Secretary receives any information, for example, inspects the facility, receives information submitted by the permittee as required in the permit see R315-3-3.1, receives a request for modification or revocation and reissuance under R315-4-1.5 or conducts review of the permit file, he may determine whether one or more of the causes listed in R315-3-4.2(a) and (b) for modification or revocation and reissuance or both exist. If cause exists, the Executive Secretary may modify or revoke and reissue the permit accordingly, subject to the limitations of R315-3-4.2(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See R315-4-1.5(c)(2). If cause does not exist under this section, the Executive Secretary shall not modify or revoke and reissue the permit, except on request of the permittee. If a permit modification is requested by the permittee, the Executive Secretary shall approve or deny the request according to the procedures of R315-3-4.3, which incorporates by reference 40 CFR 270.42. Otherwise, a draft permit shall be prepared and other procedures in R315-4 followed.

(a) Causes for modification. The following are causes for modification but not revocation and reissuance of permits, and the following may be causes for revocation and reissuance as well as modification under any program when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the approved facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Executive Secretary has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised rules, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance.

(3) New statutory requirements or rules. The standards or rules on which the permit was based have been changed by statute, through promulgation of new or amended standards or rules or by judicial decision after the permit was issued.

(4) Compliance schedules. The Executive Secretary determined good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Executive Secretary under R315-3-5.1(d), the Executive Secretary shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in these rules.

(b) Causes for modification or revocation and reissuance. The following are causes to modify, or, alternatively, revoke and reissue a permit;

(1) Cause exists for termination under R315-3-4.4 and the Executive Secretary determines that modification or revocation and reissuance is appropriate.

(2) The Executive Secretary has received notification as required in the permit, see R315-3-3.1(l)(3) of a proposed transfer of the permit.

(c) Facility siting. Suitability of the facility location may not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

4.3 PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE

The requirements of 40 CFR 270.42, including Appendix I, 2002 ed., are adopted and incorporated by reference with the following exception;

substitute "Executive Secretary" for all Federal regulation references made to "Director" or "Administrator";

4.4 TERMINATION OF PERMITS

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(b) The Executive Secretary shall follow the applicable procedures in R315-4 in terminating any permit under R315-3-4.4.

R315-3-5. Expiration and Continuation of Permits.

5.1 DURATION OF PERMITS

(a) Hazardous waste operation permits shall be effective for a fixed term not to exceed ten years.

(b) Except as provided in R315-3-5.2, the term of a permit shall not be extended by modification beyond the maximum duration specified in R315-3-5.1.

(c) The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

(d) Each permit for a land disposal facility shall be reviewed by the Board five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in R315-3-4.2.

5.2 CONTINUATION OF EXPIRING PERMITS

(a) The conditions of an expired permit continue in force until the effective date of a new permit if:

(1) The permittee has submitted a timely application under R315-3-2.5 and the applicable requirements of R315-3-2.5 and the applicable sections in R315-3-2.6 through R315-3-2.20, which is a complete application for a new permit; and

(2) The Executive Secretary through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit, for example, when issuance is impracticable due to time or resource constraints.

(b) Effect. Permits continued under this section remain fully effective and enforceable.

(c) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Executive Secretary or Board or both may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under R315-4-1.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under R315-4 with appropriate conditions;

(4) Take other actions authorized by these rules.

(d) State Continuation. If the permittee has submitted a timely and complete application, including timely and adequate response to any deficiency notice, for permit under applicable State law and rules, the terms and conditions of an EPA issued RCRA permit shall continue in force until the effective date of the State's issuance or denial of a State permit.

(e) Permits which have been issued under authority of the Federal Resource Conservation and Recovery Act will be administered by the State when hazardous waste program authorization becomes effective.

R315-3-6. Special Forms of Permits.

6.1 PERMITS BY RULE

Notwithstanding any other provision of R315-3 and R315-4, the following shall be deemed to have an approved hazardous waste permit if the conditions listed are met:

(a) Injection wells. The owner or operator of an injection well disposing of hazardous waste, if the owner or operator:

(1) Has a permit for underground injection issued under State or Federal law.

(2) Complies with the conditions of that permit and the requirements in R317-7, Underground Injection Control Program, for managing hazardous waste in a well.

(3) For UIC permits issued after November 8, 1984:

(i) Complies with R315-8-6.12; and

(ii) Where the UIC well is the only unit at a facility which requires a permit, complies with R315-3-2.5(d).

(b) Publicly owned treatment works. The owner or operator of a POTW which accepts hazardous waste, for treatment if the owner or operator:

(1) Has an NPDES permit;

(2) Complied with the conditions of that permit;

(3) Complies with the following rules;

(i) R315-8-2.2, Identification number;

(ii) R315-8-5.2, Use of manifest system;

(iii) R315-8-5.4, Manifest discrepancies;

(iv) R315-8-5.3, which incorporates by reference 40 CFR 264.73(a) and (b)(1), Operating record;

(v) R315-8-5.6, Biennial report;

(vi) R315-8-5.7, Unmanifested waste report; and

(vii) R315-8-6.12, For NPDES permits issued after November 8, 1984.

(4) If the waste meets all Federal, State, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance.

(c) Elementary Neutralization Units and Wastewater Treatment Units, as defined in 40 CFR 270.2, which R315-1-1(d) incorporates by reference.

6.2 EMERGENCY PERMITS

(a) Notwithstanding any other provision of R315-3 or R315-4, in the event the Executive Secretary finds an imminent and substantial endangerment to human health or the environment the Executive Secretary may issue a temporary emergency permit: (1) to a non-permitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective permit.

(b) This emergency permit:

(1) May be oral or written. If oral, it shall be followed in five days by a written emergency permit;

(2) Shall not exceed 90 days in duration;

(3) Shall clearly specify the hazardous waste to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Executive Secretary at any time without process if he determines that termination is appropriate to protect human health and the environment;

(5) Shall be accompanied by a public notice published under R315-4-1.10(b) including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted hazardous waste management facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of R315-3,R315-8, and R315-14.

6.3 HAZARDOUS WASTE INCINERATOR PERMITS

When an owner or operator demonstrates compliance with the air emission standards and limitations in R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), the requirements of R315-3-6.3 do not apply, except those provisions the Executive Secretary

determines are necessary to ensure compliance with R315-8-15.6(a) and R315-8-15.6(c) if you elect to comply with R315-3-9(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Executive Secretary may apply the provisions of R315-3-6.3, on a case-by-case basis, for purposes of information collection in accordance with R315-3-2.1(j) and R315-3-3.3(b)(2).

(a) For the purposes of determining operational readiness following completion of physical construction, the Executive Secretary shall establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness sufficient to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The Executive Secretary may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(1) Applicants shall submit a statement, with part B of the permit application, which suggests the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with part B of the permit and specify requirements for this period sufficient to meet the performance standards of R315-8-15.4 based on its engineering judgment.

(b) For the purpose of determining feasibility of compliance with the performance standards of R315-8-15.4, and of determining adequate operating conditions under R315-8-15.6, the Executive Secretary shall establish conditions in the permit to a new hazardous waste incinerator to be effective during the trial burn.

(1) Applicants shall propose a trial burn plan, prepared under R315-3-6.3(b)(2) with part B of the permit application.

(2) The trial burn plan shall include the following information:

(i) An analysis of each waste or mixture of wastes to be burned which includes:

(A) Heat value of the waste in the form and composition in which it will be burned.

(B) Viscosity, if applicable, or description of physical form of the waste.

(C) An identification of any hazardous organic constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, which are present in the waste to be burned, except that the applicant need not analyze for constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, which would reasonably not be expected to be found in the waste. The constituents excluded from analysis shall be identified, and the basis for their exclusion stated. The waste analysis shall rely on analytical techniques specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11 and 270.6, see R315-1-2, or other equivalent.

(D) An approximate quantification of the hazardous constituents identified in the waste, within the precision produced by the analytical methods specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11 and 270.6, see R315-1-2, or, their equivalent.

(ii) A detailed engineering description of the incinerator for which the permit is sought including:

(A) Manufacturer's name and model number of incinerator, if available.

(B) Type of incinerator.

(C) Linear dimensions of the incinerator unit including the cross sectional area of combustion chamber.

(D) Description of the auxiliary fuel system type and feed.

(E) Capacity of prime mover.

(F) Description of automatic waste feed cut-off system(s).

(G) Stack gas monitoring and pollution control equipment.

(H) Nozzle and burner design.

(I) Construction materials.

(J) Location and description of temperature, pressure, and flow indicating and control devices.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations of the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(iv) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Executive Secretary's decision under R315-3-6.3(b)(5).

(v) A detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator.

(vi) A description of, and planned operating conditions for, any emission control equipment which will be used.

(vii) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction.

(viii) All other information as the Executive Secretary reasonably finds necessary to determine whether to approve the trial burn plan in light of the purpose of this paragraph and the criteria in R315-3-6.3(b)(5).

(3) The Executive Secretary, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph.

(4) Based on the waste analysis data in the trial burn plan, the Executive Secretary will specify as trial Principal Organic Hazardous Constituents (POHCs), those constituents for which destruction and removal efficiencies shall be calculated during the trial burn. These trial POHCs will be specified by the Executive Secretary based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and, for wastes listed in R315-2-10, the hazardous waste organic constituent or constituents identified in R315-50-9 as the basis for listing.

(5) The Executive Secretary shall approve a trial burn plan if he finds that:

(i) The trial burn is likely to determine whether the incinerator performance standard required by R315-8-15.4 can be met;

(ii) The trial burn itself will not present an imminent hazard to human health or the environment;

(iii) The trial burn will help the Executive Secretary to determine operating requirements to be specified under R315-8-15.6; and

(iv) The information sought in R315-3-6.3(b)(5)(i) and (ii) cannot reasonably be developed through other means.

(6) The Executive Secretary shall send a notice to all persons on the facility mailing list as set forth in R315-4-1.10(c)(1)(iv) and to the appropriate units of State and local government as set forth in R315-4-1.10(c)(1)(v) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Executive Secretary has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Division.

(ii) This notice shall contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the Division;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC, oxygen (O_2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in R315-8-15.4(a).

(v) If the HC1 emission rate exceeds 1.8 kilograms of HC1 per hour (4 pounds per hour), a computation of HC1 removal efficiency in accordance with R315-8-15.4(b).

(vi) A computation of particulate emissions in accordance with R315-8-15.4(c).

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) All other information as the Executive Secretary may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in R315-8-15.4 and to establish the operating conditions required by R315-8-15.6 as necessary to meet that performance standard.

(8) The applicant shall submit to the Executive Secretary a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and shall submit the results of all the determinations required in R315-3-6.3(b)(7). This submission shall be made within 90 days of completion of the trial burn, or later if approved by the Executive Secretary.

(9) All data collected during any trial burn shall be submitted to the Executive Secretary following the completion of the trial burn.

(10) All submissions required by this paragraph shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under R315-3-2.2.

(11) Based on the results of the trial burn, the Executive Secretary shall set the operating requirements in the final permit according to R315-8-15.6. The permit modification shall proceed according to R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(c) For the purpose of allowing operation of a new hazardous waste incinerator following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the Executive Secretary may establish permit conditions, including but no limited to allowable waste feeds and operating conditions sufficient to meet the requirements of R315-8-15.6, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Executive Secretary.

(1) Applicants shall submit a statement, with part B of the permit application, which identifies the conditions necessary to operate in compliance with the performance standards of R315-8-15.4 during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in R315-8-15.6.

(2) The Executive Secretary will review this statement and any other relevant information submitted with part B of the permit application and specify those requirements for this period most likely to meet the performance standards of R315-8-15.4 based on its engineering judgment.

(d) For the purposes of determining feasibility of compliance with the performance standards of R315-8-15.4 and of determining adequate operating conditions under R315-8-15.6, the applicant for a permit for an existing hazardous waste incinerator shall prepare and submit a trial burn plan and perform a trial burn in accordance with R315-3-2.10(b) and R315-3-6.3(b)(2) through (b)(5) and (b)(7) through (b)(10) or, instead, submit other information as specified in R315-3-2.10(c). The Executive Secretary shall announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of R315-3-6.3(b)(6). The contents of the notice shall include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the Division; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under R315-3-2.10(a) are exempt from compliance with R315-8-15.4 and R315-8-15.6 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application shall complete the trial burn and submit the results, specified in R315-3-6.3(b)(7), with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant shall contact the Executive Secretary to establish a later date for submission of the part B application or the trial burn results. Trial burn results shall be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Executive Secretary will specify a time period prior to permit issuance in which the trial burn shall be conducted and the results submitted.

6.4 PERMITS FOR LAND TREATMENT DEMONSTRATIONS USING FIELD TEST OR LABORATORY ANALYSES

(a) For the purpose of allowing an owner or operator to meet the treatment demonstration requirements of R315-8-13.3, the Executive Secretary may issue a treatment demonstration permit. The permit shall contain only those requirements necessary to meet the standards in R315-8-13.3(c). The permit may be issued either as a treatment or disposal approval covering only the field test or laboratory analyses, or as a two-phase facility approval covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

(1) The Executive Secretary may issue a two-phase facility permit if they find that, based on information submitted in part B of the application, substantial, although incomplete or inconclusive, information already exists upon which to base the issuance of a facility permit.

(2) If the Executive Secretary finds that not enough

information exists upon which they can establish permit conditions to attempt to provide for compliance with all the requirements of R315-8-13, he shall issue a treatment demonstration permit covering only the field test or laboratory analyses.

(b) If the Executive Secretary finds that a phased permit may be issued, he will establish, as requirements in the first phases of the facility permit, conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters, including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, post-demonstration cleanup activities, and any other conditions which the Executive Secretary finds may be necessary under R315-8-13.3(c). The Executive Secretary will include conditions in the second phase of the facility permit to attempt to meet all R315-8-13 requirements pertaining to unit design, construction, operation, and maintenance. The Executive Secretary will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the part B application.

(1) The first phase of the permit will be effective as provided in R315-4-1.15.

(2) The second phase of the permit will be effective as provided in R315-3-6.4(d).

(c) When the owner or operator who has been issued a two-phase permit has completed the treatment demonstration, he shall submit to the Executive Secretary certification, signed by a person authorized to sign a permit application or report under R315-3-2.2, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in phase one of the permit for conducting the tests or analyses. The owner or operator shall also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses unless the Executive Secretary approves a later date.

(d) If the Executive Secretary determines that the results of the field tests or laboratory analyses meet the requirements of R315-8-13.3, he will modify the second phase of the permit to incorporate any requirement necessary for operation of the facility in compliance with R315-8-13, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under R315-3-4.3, which incorporates by reference 40 CFR 270.42, or otherwise will proceed as a modification under R315-3-4.2(a)(2). If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modification of the second phase of the permit are necessary, the Executive Secretary will give notice of his final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of final decision on the second phase of the permit. The second phase of the permit then will become effective as specified in R315-4-1.15(b).

6.5 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

(a) The Executive Secretary may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for any experimental activity have not been promulgated under R315-8 and R315-14. Any such permits shall include such terms and conditions as will assure protection of human health and the environment. These permits:

(1) Shall provide for the construction of these facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in R315-3-6.5(d), and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Executive Secretary deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of the technology or process on human health and the environment; and

(3) Shall include all requirements as the Executive Secretary deems necessary to protect human health and the environment, including, but not limited to requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and all requirements as the Executive Secretary or Board or both deems necessary regarding testing and providing of information to the Executive Secretary with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permit under this section, the Executive Secretary may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in R315-3 and R315-4 except that there may be no modification or waiver of regulations regarding financial responsibility, including insurance, or of procedures regarding public participation.

(c) The Executive Secretary or Board or both may order an immediate termination of all operations at the facility at any time they determine that termination is necessary to protect human health and the environment.

(d) Any permit issued under this section may be renewed not more than three times. Each renewal shall be for a period of not more than one year.

6.6 PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE

The requirements of 40 CFR 270.66, 2002 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director."

6.7 REMEDIAL ACTION PLANS

Remedial Action Plans (RAPs) are special forms of permits that are regulated under R315-3-8, which incorporates by reference 40 CFR 270, subpart H.

R315-3-7. Interim Status.

7.1 QUALIFYING FOR INTERIM STATUS

(a) Any person who owns or operates an "existing hazardous waste management facility" or a facility in existence on the effective date of statutory or regulatory amendments under the State or Federal Act that render the facility subject to the requirement to have a RCRA permit or State permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

(1) Complied with the Federal requirements of section 3010(a) of RCRA pertaining to notification of hazardous waste activity or the notification requirements of these rules.

Comment: Some existing facilities may not be required to file a notification under section 3010(a) of RCRA. These facilities may qualify for interim status by meeting R315-3-7.1(a)(2).

(2) Complied with the requirements of 40 CFR 270.10 or R315-3-2.1 governing submission of part A applications;

(b) Failure to qualify for interim status. If the Executive Secretary has reason to believe upon examination of a part A application that it fails to meet the requirements of R315-3-2.4, the Executive Secretary shall notify the owner or operator in writing of the apparent deficiency. The notice shall specify the grounds for the Executive Secretary's belief that the application is deficient. The owner or operator shall have 30 days from receipt to respond to the notification and to explain or cure the alleged deficiency in his part A application. If, after the notification and opportunity for response, the Executive

Secretary determines that the application is deficient he may take appropriate enforcement action.

(c) R315-3-7.1(a) shall not apply to any facility which has been previously denied a permit or RCRA permit or if authority to operate the facility under State or Federal authority has been previously terminated.

7.2 OPERATION DURING INTERIM STATUS

(a) During the interim status period the facility shall not:

(1) Treat, store, or dispose of hazardous waste not specified in part A of the permit or permit application;

(2) Employ processes not specified in part A of the permit or permit application; or

(3) Exceed the design capacities specified in part A of the permit or permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards in R315-7.

7.3 CHANGES DURING INTERIM STATUS

(a) Except as provided in R315-3-7.3(b), the owner or operator of an interim status facility may make the following changes at the facility:

(1) Treatment, storage, or disposal of new hazardous wastes not previously identified in part A of the permit application and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification if the owner or operator submits a revised part A permit application prior to treatment, storage, or disposal;

(2) Increases in the design capacity of processes used at the facility if the owner or operator submits a revised part A permit application prior to a change, along with a justification explaining the need for the change, and the Executive Secretary approves the changes because:

(i) There is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(3) Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised part A permit application prior to such change, along with a justification explaining the need for the change, and the Executive Secretary approves the change because:

(i) The change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(ii) The change is necessary to comply with a Federal, State, or local requirement.

(4) Changes in the ownership or operational control of a facility if the new owner or operator submits a revised part A permit application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of R315-7-15, which incorporates by reference 40 CFR 265 subpart H, until the new owner or operator has demonstrated to the Executive Secretary that he is complying with the requirements of that subpart. The new owner or operator shall demonstrate compliance with R315-7-15, which incorporates by reference 40 CFR 265 subpart H, within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the Executive Secretary by the new owner or operator of compliance with R315-7-15, which incorporates by reference 40 CFR 265 subpart H, the Executive Secretary shall notify the old owner or operator in writing that he no longer needs to comply with R315-7-15, which incorporates by reference 40 CFR 265 subpart H, as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility.

(5) Changes made in accordance with an interim status corrective action order issued, under 19-6-105(d), or by EPA under section 3008(h) RCRA or other Federal authority or by a court in a judicial action brought by EPA or by an authorized State. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A permit application on or before the date on which the unit becomes subject to the new requirements.

(b) Except as specifically allowed under this paragraph, changes listed under R315-3-7.3(a) may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) Changes made solely for the purposes of complying with the requirements of R315-7-17, which incorporates by reference 40 CFR 265.193, for tanks and ancillary equipment.

(2) If necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 3004(o) of RCRA.

(3) Changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification.

(4) Changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan.

(5) Changes necessary to comply with an interim status corrective action order issued, under subsection 19-6-105(d), or by EPA under section 3008(h) of RCRA or other Federal authority, or by a court in a judicial proceeding brought by EPA, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Changes to treat or store, in tanks or containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by R315-13, which incorporates by reference 40 CFR 268, or R315-8, provided that these changes are made solely for the purpose of complying with R315-13, which incorporates by reference 40 CFR 268, or R315-8.

(7) Addition of newly regulated units under R315-3-7.3(a)(6).

(8) Changes necessary to comply with standards under 40 CFR part 63, subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.

7.4 TERMINATION OF INTERIM STATUS

Interim status terminates when:

(a) Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under R315-3-8, which incorporates by reference 40 CFR 270, subpart H, is made.

(b) Interim status is terminated as provided in R315-3-2.1(d)(5).

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a part B application for a permit for a facility prior to that date; and

(2) The owner or operator certifies that the facility is in compliance with all applicable groundwater monitoring and

financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Federal Act that render the facility subject to the requirement to have a RCRA permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to the permit requirement unless the owner or operator of the facility:

(1) Submits a part B application for a permit for the facility before the date 12 months after the date on which the facility first becomes subject to the permit requirement; and

(2) Certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(e) For owners or operators of any land disposal unit that is granted authority to operate under R315-3-7.3(a)(1), (2) or (3), on the date 12 months after the effective date of the requirement, unless the owner or operator certifies that this unit is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) For owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a part B application for a permit for an incinerator facility by November 8, 1986.

(g) For owners or operators of any facility, other than a land disposal or an incinerator facility, which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a part B application for a hazardous waste permit for the facility by November 8, 1988.

R315-3-8. Remedial Action Plans (RAPs).

The requirements of 40 CFR 270, subpart H, which includes sections 270.79 through 270.230, 2000 ed., are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all Federal regulation references made to "Director."

R315-3-9. Integration with Maximum Achievable Control Technology (MACT) Standards.

9.1 OPTIONS FOR INCINERATORS AND CEMENT AND LIGHTWEIGHT AGGREGATE KILNS TO MINIMIZE EMISSIONS FROM STARTUP, SHUTDOWN, AND MALFUNTION EVENTS

(a) Facilities with existing permits. (1) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a hazardous waste-permitted incinerator, cement kiln, or lightweight aggregate kiln may request that the Executive Secretary address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to R315-8-15.1(b) and R315-14-7, which incorporates by reference 40 CFR 266.100(b):

(i) Retain relevant permit conditions. Under this option, the Executive Secretary will:

(A) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2); and

(B) Limit applicability of those permit conditions only to when the facility is operating under its startup, shutdown, and malfunction plan.

(ii) Revise relevant permit conditions.

(A) Under this option, the Executive Secretary will:

(1) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(2) Retain or add these permit requirements to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(1) You must notify the Executive Secretary in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Executive Secretary of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(2) The Executive Secretary may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(i) Upon permit renewal, or, if warranted;

(ii) By modifying the permit under R315-3-4.2(a) or R315-3-4.3, which incorporates by reference 40 CFR 270.42.

(iii) Remove permit conditions. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2), has been approved by the Board under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Executive Secretary will remove permit conditions that are no longer applicable according to R315-8-15.1(b) and R315-14-7, which incorporates by reference 40 CFR 266.100(b).

(2) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that has conducted a comprehensive performance test and submitted to the Board a Notification of Compliance documenting compliance with the standards of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, may request in the application to reissue the permit for the combustion unit that the Executive Secretary control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) RCRA option A.

(A) Under this option, the Executive Secretary will:

(1) Include, in the permit, conditions that ensure compliance with R315-8-15.6(a) and (c) or R315-14-7, which incorporates by reference 40 CFR 266.102(e)(1) and (e)(2)(iii), to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(2) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.; or

(ii) RCRA option B.

(A) Under this option, the Executive Secretary will:

(1) Include, in the permit conditions, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(2) Specify that these permit requirements apply only

when the facility is operating under its startup, shutdown, and malfunction plan.

(B) Changes that may significantly increase emissions.

(1) You must notify the Executive Secretary in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. You must notify the Executive Secretary of such changes within five days of making such changes. You must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(2) The Executive Secretary may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(i) Upon permit renewal, or, if warranted;

(ii) By modifying the permit under R315-3-4.2(a) or R315-3-4.3, which incorporates by reference 40 CFR 270.42; or

(iii) CAA option. Under this option:

(A) The owner or operator must document that the startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2), has been approved by the Board under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Executive Secretary will omit from the permit conditions that are not applicable under R315-8-15.1(b) and R315-14-7, which incorporates by reference 40 CFR 266.100(b).

(b) Interim status facilities.

(1) Interim status operations. In compliance with R315-7-22 and R315-14-7, which incorporates by reference 40 CFR 266.100(b), the owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of R315-7 or R315-14 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Board a Notification of Compliance documenting compliance with the standards of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE:

(i) RCRA option. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of R315-7 or R315-14 relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

(ii) CAA option. Under this option, the owner or operator is exempt from the interim status standards of R315-7 or R315-14 relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the Executive Secretary that the startup, shutdown, and malfunction plan required under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2), has been approved by the Board under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B).

(2) Operations under a subsequent hazardous waste permit. When an owner or operator of an incinerator, cement kiln, or lightweight aggregate kiln that is operating under the interim status standards of R315-7 or R315-14 submits a hazardous waste permit application, the owner or operator may request that the Executive Secretary control emissions from startup, shutdown, and malfunction events under any of the options provided by R315-3-9(a)(2)(i), (a)(2)(ii), or (a)(2)(iii).

KEY: hazardous waste

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-4. Procedures for Decisionmaking.
R315-4-1. General Program Requirements.

1.3 APPLICATION FOR A PERMIT

(a) If the Executive Secretary decides that a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a reasonable date shall be scheduled.

(b) The effective date of an application is the date on which the Executive Secretary notifies the applicant that the application is complete as provided in R315-3-2.1(c).

(c) For each application from a major new hazardous waste management facility, the Executive Secretary shall no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Executive Secretary intends to:

(1) Prepare a draft permit;

(2) Give public notice;

(3) Complete the public comment period, including any public hearing; and

(4) Issue a final permit.

1.5 MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF PERMITS

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the Executive Secretary's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in R315-3-4.2 or R315-3-4.4. All requests shall be in writing and shall contain facts or reasons supporting the request.

(b) If the Executive Secretary decides the request is not justified, he shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Executive Secretary may be appealed to the Board under R315-12-3 by filing a Request for Agency Action pursuant to R315-12-3.1.

(c)(1) If the Executive Secretary tentatively decides to modify or revoke and reissue a permit under R315-3-4.2 or R315-3-4.3, which incorporates by reference 40 CFR 270.42(c), he shall prepare a draft permit under R315-4-1.6 incorporating the proposed changes. The Executive Secretary may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Executive Secretary shall require the submission of a new application.

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(3) Classes 1 and 2 modifications, as defined in R315-3-4.3, which incorporates by reference 40 CFR 270.42(a) and (b), are not subject to the requirements of this section.

(d) If the Executive Secretary tentatively decides to terminate a permit under R315-3-4.4, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under R315-4-1.6.

1.6 DRAFT PERMIT

(a) Once an application is complete, the Executive Secretary shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Executive Secretary tentatively decides to deny the permit, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Executive Secretary's final decision is that the tentative decision to deny the permit application was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft permit under R315-4-1.6(c).

(c) If the Executive Secretary decides to prepare a draft permit, he shall prepare a draft permit that contains the following information:

(1) All conditions under R315-3-3.1 and R315-3-3.3;

(2) All compliance schedules under R315-3-3.4;

(3) All monitoring requirements under R315-3-3.2; and

(4) Standards for treatment, storage, or disposal or all and other permit conditions under R315-3-3.1.

(d) All draft permits prepared by the Executive Secretary under this section shall be publicly noticed and made available for public comment. The Executive Secretary shall give notice of opportunity for a public hearing, issue a final decision, and respond to comments.

1.8 FACT SHEET REQUIRED

(a) A fact sheet shall be prepared by the Executive Secretary for every draft permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Executive Secretary shall send this fact sheet to the applicant and, on request, to any other person.

(b) The fact sheet shall include, when applicable:

(1) A brief description of the type of facility or activity which is the subject of the draft permit.

(2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged.

(3) A brief summary of the basis of the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references.

(4) Reasons why any requested variance or alternatives to required standards do or do not appear justified.

(5) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period under R315-4-1.10 and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision.

(6) Name and telephone number of a person to contact for additional information.

1.10 PUBLIC NOTICE OF PERMIT ACTIONS AND PUBLIC COMMENT PERIOD

(a) Scope.

(1) The Executive Secretary shall give public notice that the following actions have occurred:

(i) The permit application has been tentatively denied under R315-4-1.6(b).

(ii) A draft permit has been prepared under R315-4-1.6(c).

(iii) A hearing has been scheduled under R315-4-1.12; or

(iv) An appeal has been granted by the Board.

(2) No public notice is required when a request for a permit modification, revocation and reissuance, or termination is denied under R315-4-1.5(b). Written notice of that denial shall be given to the requestor and to the permittee.

(3) Public notices may describe more than one permit or permit action.

(b) Timing.

(1) Public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under R315-4-1.10(a), shall allow at least 45 days for

public comment.

(2) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(c) Methods.

Public notices of activities described in R315-4-1.10(a)(1) shall be given by the following methods:

(1) By mailing a copy of a notice to the following persons:

(i) The applicant;

(ii) Any other agency which the Executive Secretary knows has issued or is required to issue a permit, for the same facility or activity including EPA;

(iii) Federal and State agencies with jurisdiction over fish, and wildlife resources, State Historic Preservation Officers, and other appropriate government authorities;

(iv) Persons on a mailing list developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for area lists from participants in past permit proceedings in the area of the facility; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in regional- and state-funded newsletters, environmental bulletins, or law journals. The Executive Secretary may update the mailing list by requesting written indication of continued interest from those listed. The Executive Secretary may delete from the list the name of any person who fails to respond to a request from the Executive Secretary to remain on the mailing list; and

(v)(A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located;

(B) To each State agency having any authority under State law with respect to the construction or operation of the facility.

(2) Publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity and broadcast over local radio stations;

(3) In a manner constituting legal notice to the public under State law; and

(4) Any other method reasonably calculated to give actual notice of the action in question to the person potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(d)(1) All public notices issued under this section shall contain the following minimum information:

(i) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(ii) A brief description of the business conducted at the facility or activity described in the permit application or draft permit;

(iii) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or fact sheet, and the application;

(iv) A brief description of the comment procedures required by R315-4-1.11 and R315-4-1.12, and the time and place of any hearing that will be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled and other procedures by which the public may participate in the final permit decision; and

(v) Any additional information considered necessary or proper.

(2) Public notices of hearings. In addition to the general public notice described in R315-4-1.10(d)(1), the public notice of a hearing under R315-4-1.12, shall contain the following information:

(i) Reference to the date of previous public notices relating the permit;

(ii) Date, time, and place of the hearing;

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(e) In addition to the general public notice described in R315-4-1.10(d)(1), all persons identified in R315-4-1.10(c)(1)(i), (ii), and (iii) shall be mailed a copy of the fact sheet.

1.11 PUBLIC COMMENTS AND REQUESTS FOR PUBLIC HEARINGS

During the public comment period provided under R315-4-1.10, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in R315-4-1.17.

1.12 PUBLIC HEARINGS

(a)(1) The Executive Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The Executive Secretary may also hold a public hearing at his discretion, whenever, for instance, a hearing might clarify one or more issues involved in the permit decision.

(3)(i) The Executive Secretary shall hold a public hearing whenever he receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under R315-4-1.10(b).

(ii) Whenever possible the Executive Secretary shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility.

(4) Public notice of the hearing shall be given as specified in R315-4-1.10.

(b) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R315-4-1.10 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) A tape recording or written transcript of the hearing shall be made available to the public.

1.15 ISSUANCE AND EFFECTIVE DATE OF PERMIT

(a) After the close of the public comment period under R315-4-1.10 on a draft permit, the Executive Secretary shall issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under R315-3-2.20). The Executive Secretary shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a hazardous waste permit or a decision to terminate a hazardous waste permit. For the purposes of R315-4-1.15, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or unit under R315-3-2.20) shall become effective upon issuance unless:

(1) A later effective date is specified in the decision; or

(2) The permit decision is challenged under R315-12-3 and a stay of the decision is granted under R315-12-8.

1.17 RESPONSE TO COMMENTS

(a) At the time that any final permit decision is issued, the Executive Secretary shall issue a response to comments. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons

for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or permit application raised during the public comment period, or during any hearing.

(b) The response to comments shall be available to the public.

R315-4-2. Specific Procedures Applicable to Hazardous Waste Permits.

2.31 PRE-APPLICATION PUBLIC MEETING AND NOTICE

(a) Applicability. The requirements of this section shall apply to all part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under R315-3-4.3, which incorporates by reference 40 CFR 270.42. The requirements of this section do not apply to permit modifications under R315-3-4.3, which incorporates by reference 40 CFR 270.42, or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B permit for a facility, the applicant shall hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under R315-4-2.31(b), and copies of any written comments or materials submitted at the meeting, to the Executive Secretary as a part of the part B application in accordance with R315-3-2.5(b).

(d) The applicant shall provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant shall maintain, and provide to the Division upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in R315-4-2.31(d)(2), in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Executive Secretary shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Executive Secretary determines that such publication is necessary to inform the affected public. The notice shall be published as a display advertisement.

(ii) A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in 315-4-2.31(d)(2). If the applicant places the sign on the facility property, then the sign shall be large enough to be readable from the nearest point where the public would pass by the site.

(iii) A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in R315-4-2.31(d)(2), at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval from the Executive Secretary.

(iv) A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the Division and local governments in accordance with R315-4-1.10(c)(1)(v).

(2) The notices required under R315-4-2.31(d)(1) shall include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map, e.g., a sketched or copied street map, of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

2.32 PUBLIC NOTICE REQUIREMENTS AT THE APPLICATION STAGE

(a) Applicability. The requirements of this section shall apply to all part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to part B applications seeking renewal of permits for such units under R315-3-5.2(b) through (d). The requirements of this section do not apply to permit modifications under R315-3-4.3, which incorporates by reference 40 CFR 270.42, or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Executive Secretary shall provide public notice as set forth in R315-4-1.10(c)(1)(iv), and notice to appropriate units of State and local government as set forth in R315-4-1.10(c)(1)(v), that a part B permit application has been submitted to the Division and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Executive Secretary. The notice shall include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the Division, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map, e.g., a sketched or copied street map, of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under R315-4-2.32(b), the Executive Secretary shall place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the Division's office.

2.33 INFORMATION REPOSITORY

(a) Applicability. The requirements of this section shall apply to all part B applications seeking initial permits for hazardous waste management units.

(b) The Executive Secretary may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Executive Secretary shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity of the nearest copy of the administrative record. If the Executive Secretary determines, at any time after submittal of a permit application, that there is a need for a repository, then the Executive Secretary shall notify the facility that it shall establish and maintain an information repository. See R315-3-3.1(m) for similar provisions relating to the information repository during the life of a permit.

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the

Executive Secretary to fulfill the purposes for which the repository is established. The Executive Secretary shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Executive Secretary finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Executive Secretary shall specify a more appropriate site.

(e) The Executive Secretary shall specify requirements for informing the public about the information repository. At a minimum, the Executive Secretary shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Executive Secretary. The Executive Secretary may close the repository at his or her discretion, based on the factors in R315-4-2.33(b).

R315-4-10. Public Participation.

In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these rules, the Executive Secretary will investigate and provide written response to all citizen complaints duly submitted. In addition, the Executive Secretary shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Executive Secretary will publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

R315-4-11. Commercial Hazardous Waste Facility Siting Criteria.

(a) Applicability.

R315-4-11 applies to all permit applications for commercial facilities that have been submitted and that have not yet been approved, as well as all future applications.

(b) Land Use Compatibility and Location.

(1) Siting of commercial hazardous waste treatment, storage, and disposal facilities, including commercial hazardous waste incinerators, is prohibited within:

(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 but not limited to, wildlife management areas and habitat for listed or proposed endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) 100 year floodplains, unless, for non-land based facilities only, the conditions found in subsection R315-8-2.9 are met to the satisfaction of the Executive Secretary;

(iv) 200 ft. of Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas likely to be impacted by landslide, mudflow, or other earth movement;

(viii) farmlands 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;

(ix) areas above aquifers containing ground water which has a total dissolved solids (TDS) content of less than 500 mg/l and which does not exceed applicable ground water quality standards for any contaminant. Land disposal facilities are also prohibited above aquifers containing ground water which has a TDS content of less than 3000 mg/l and which does not exceed applicable ground water quality standards for any contaminant. Non-land-based facilities above aquifers containing ground water which has a TDS content of 500 to 3000 mg/l and all facilities above aquifers containing ground water which has a TDS content between 3000 and 10,000 mg/l are permitted only where the depth to ground water is greater than 100 ft. The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification;

(x) recharge zones of aquifers containing ground water which has a TDS content of less than 3000 mg/l. Land disposal facilities are also prohibited in recharge zones of aquifers containing ground water which has a TDS content of less than 10,000 mg/l;

(xi) designated drinking water source protection areas or, if no source protection area is designated, a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for non-land-based facilities and five years ground water travel time plus 1000 feet for land disposal facilities. This requirement does not include on-site facility 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 one or five year ground water travel distance as applicable. The facility operator may be required to conduct vadose zone or other near surface monitoring if determined to be necessary and appropriate by the Executive Secretary;

(xii) five miles of existing permanent dwellings, residential areas, and other incompatible structures including, but not limited to, schools, churches, and historic structures;

(xiii) five miles of surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, estuaries, and wetlands; and

(xiv) 1000 ft. of archeological sites to which adverse impacts cannot reasonably be mitigated.

(c) Emergency Response and Transportation Safety.

(1) An assessment of the availability and adequacy of emergency services, including medical and fire response, shall be included in the permit application. The application shall also contain evidence that emergency response plans have been coordinated with local and regional emergency response personnel. The permit may be delayed or denied if these services are deemed inadequate.

(2) Trained emergency response personnel and equipment are to be retained by the facility and be capable of responding to emergencies both at the site and involving wastes being transported to and from the facility within the state. Details of the proposed emergency response capability shall be given in the permit application and will be stipulated in the permit.

(3) Proposed routes of transport within the state shall be specified in the permit application. No hazardous waste shall be transported on roads where weight restrictions for the road or any bridge on the road will be exceeded in the selected route of travel. Prime consideration in the selection of routes shall be given to roads which bypass population centers. Route selection should consider residential and non-residential populations along the route; the width, condition, and types of roads used; roadside development along the route; seasonal and climatic factors; alternate emergency access to the facility site; the type, size, and configuration of vehicles expected to be hauling to the site; transportation restrictions along the proposed routes; and the transportation means and routes available to evacuate the population at risk in the event of a major accident, including spills and fires.

(d) Exemptions.

Exemptions from the criteria of this section may be granted upon application on a case by case basis by the Solid and Hazardous Waste Control Board after an appropriate public

comment period and when the Board determines that there will be no adverse impacts to public health or the environment. The Board cannot grant exemptions which would conflict with applicable regulations and restrictions of other regulatory authorities.

(e) Completeness of Application.

The permit application shall not be considered complete until the applicant demonstrates compliance with the criteria given herein.

(f) Siting Authority.

It is recognized that Titles 10 and 17 of the Utah Code give cities and counties authority for local land use planning and zoning. Nothing in these rules precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

KEY: hazardous waste
October 20, 2000 19-6-105
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-5. Hazardous Waste Generator Requirements.
R315-5-1. General.

1.10 PURPOSE, SCOPE, AND APPLICABILITY.

(a) R315-5 establishes standards for generators of hazardous waste.

(b) R315-2-5, which incorporates by reference, 40 CFR 261.5(c) and (d), must be used to determine the applicability of provisions of R315-5 that are dependent on calculations of the quantity of hazardous waste generated per month.

(c) A generator who treats, stores, or disposes of hazardous waste on-site shall only comply with the following sections of this rule with respect to that waste: R315-5-1.11, which incorporates by reference 40 CFR 262.11, for determining whether or not he has a hazardous waste, R315-5-1.12 for obtaining an EPA identification number, R315-5-3.34 for accumulation of hazardous waste, R315-5-4.40(c) and (d) for recordkeeping, R315-5-4.43 for additional reporting, and if applicable, R315-5-7 for farmers.

(d) Any person who exports or imports hazardous waste as identified in R315-5-8, which incorporates by reference 40 CFR 262.80(a), and is subject to the manifesting requirements of R315-5, or subject to the universal waste management standards as found in R315-16, to or from the countries listed in 40 CFR 262.58(a)(1), which R315-5-5 incorporates by reference, for recovery shall comply with R315-5-8, which incorporates by reference 40 CFR 262 subpart H.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in R315-5.

(f) A farmer who generates waste pesticides which are hazardous wastes and who complies with all the requirements of R315-5-7 is not required to comply with other standards in this rule or R315-3, R315-7, R315-8, or R315-13, which incorporates by reference 40 CFR 268, with respect to these pesticides.

(g) A person who generates a hazardous waste as defined by R315-2 is subject to the compliance requirements and penalties prescribed in The Utah Solid and Hazardous Waste Act if he does not comply with the requirements of this rule.

A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and plan approval requirements set forth in R315-3, R315-7, and R315-8.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in R315-5.

The provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in R315-3, R315-7, R315-8, R315-13, which incorporates by reference 40 CFR 268, and R315-14.

1.11 HAZARDOUS WASTE DETERMINATION

The requirements of 40 CFR 262.11, 1994 ed., as amended by 60 FR 25540, May 11, 1995, are adopted and incorporated by reference with the following exception:

Substitute "Board" for all federal regulation references made to "Administrator".

1.12 EPA IDENTIFICATION NUMBERS

(a) A generator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Executive Secretary.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Executive Secretary using EPA form 8700-12. Upon receiving the request the Executive Secretary will assign an EPA identification number to the generator.

(c) A generator shall not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that do not have an EPA identification number.

R315-5-2. The Manifest.

A sample hazardous waste manifest form containing information required pursuant to these rules is found in the Appendix to 40 CFR 262. All applicable sections of each manifest shall be completely and legibly filled out.

2.20 GENERAL REQUIREMENTS

(a) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal shall prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the instructions, including the additional information requirements, found in R315-50-1, which incorporates by reference 40 CFR 262, Appendix.

(b) A generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

(e) These manifest requirements do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of R315-5-2 and R315-5-3.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding R315-6-1.10(a), the generator or transporter shall comply with the requirements for transporters set forth in R315-9-1 and R315-9-3 in the event of a discharge of hazardous waste on a public or private right-of-way.

2.21 ACQUISITION OF MANIFESTS

(a) If the State to which the shipment is manifested (consignment State) supplies the manifest and requires its use, then the generator must use that manifest.

(b) If the consignment State does not supply the manifest, but the State in which the generator is located, generator State, supplies the manifest and requires its use, then the generator must use that State's manifest.

(c) If neither the generator State nor the consignment State supplies the manifest, then the generator may obtain the manifest from any source.

2.22 NUMBER OF COPIES

The manifest shall consist of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each

for their records and another copy to be returned to the generator.

2.23 USE OF THE MANIFEST

(a) The generator shall:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with R315-5-4.40(a).

(b) The generator shall give the transporter the remaining copies of the manifest.

(c) Hazardous wastes to be shipped within Utah solely by water (bulk shipments only) require that the generator send three copies of the manifest dated and signed in accordance with this section to the owner and operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of the hazardous wastes within Utah which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) The generator shall include on the manifest a description of the hazardous waste(s) as set forth in the regulations of the U.S. Department of Transportation in 49 CFR 172.101, 172.202, and 172.203.

(f) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained federal authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

R315-5-3. Pre-Transport Requirements.

3.30 PACKAGING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall package the waste in accordance with the Department of Transportation regulations on packaging under 49 CFR 173, 178, and 179.

3.31 LABELING

Prior to transporting or offering hazardous waste for transportation off-site, a generator shall label each hazardous waste package in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR 172.

3.32 MARKING

(a) Before transporting or offering hazardous waste for transportation off-site, a generator shall mark each package of hazardous waste in accordance with the Department of Transportation regulations on hazardous materials under 49 CFR 172.

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator shall mark each container of 110 gallons or less used in transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address

Manifest Document Number

3.33 PLACARDING

Prior to transporting hazardous waste or offering hazardous waste for transporting off-site, a generator shall placard or offer the initial transporter the appropriate placards according to the Department of Transportation regulations for the movement of hazardous materials under 49 CFR 172, subpart F.

3.34 ACCUMULATION TIME

(a) These requirements as found in 40 CFR 262.34, 2000 ed., are adopted and incorporated by reference with the following addition.

(b) The notification required by 40 CFR 262.34(d)(5)(iv)(C) shall also be made to the Executive Secretary or to the 24-hour answering service listed in R315-9-1(b).

R315-5-4. Recordkeeping and Reporting.

4.40 RECORDKEEPING

(a) A generator shall keep a copy of each manifest signed in accordance with R315-5-2.23(a) for three years or until a signed copy is received from the designated facility which received the waste. The signed copy shall be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator shall keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) Records maintained in accordance with this section and any other records which the Board or Executive Secretary deems necessary to determine quantities and disposition of hazardous waste or other determinations, test results, or waste analyses made in accordance with R315-5-1.11, which incorporates by reference 40 CFR 262.11, shall be available for inspection by any duly authorized officer, employee or representative of the Department or the Board as provided in R315-2-12 for a period of at least three years from the date the waste was last sent to on-site or off-site treatment, storage, or disposal facilities.

(d) The periods of retention referred to in this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Board or its duly appointed representative.

4.41 BIENNIAL REPORTING

(a) A generator who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit a single copy of a biennial report to the Executive Secretary by March 1 of each even numbered year. The biennial report shall be submitted on EPA Form 8700-13A and must cover generator activities during the previous calendar year, and must include the following information:

(1) The EPA identification number, name, and address of the generator;

(2) The calendar year covered by the report;

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage, or disposal facility within the United States;

(5) A description, EPA hazardous waste number, from R315-2-9, R315-2-10, or R315-2-11, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage, or disposal facility within the United States. This information must be listed by EPA Identification number of each off-site facility to which waste was shipped;

(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for years prior to 1984;

(8) The certification signed by the generator or authorized representative.

(b) Any generator who treats, stores, or disposes of

hazardous waste on-site shall submit a biennial report covering those wastes in accordance with the provisions of R315-3, R315-7, and R315-8. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth in R315-5-5, which incorporates by reference 40 CFR 262.56.

4.42 EXCEPTION REPORTING

(a)(1) A generator of greater than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated treatment, storage or disposal facility within 35 days of the date the waste was accepted by the initial transporter shall contact the transporter or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of greater than 1000 kilograms of hazardous waste in a calendar month shall submit an Exception Report to the Executive Secretary if he has not received a signed copy of the manifest from the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report shall consist of a legible copy of the manifest for which the generator does not have confirmation of delivery and a cover letter signed by the generator or his authorized representative explaining the efforts taken by the generator to locate the hazardous waste, and the results of those efforts.

(b) A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the Executive Secretary. The submission to the Executive Secretary need only be a hand written or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

4.43 ADDITIONAL REPORTING

The Board or Executive Secretary, as is deemed necessary pursuant to these rules, may require generators to furnish additional reports concerning the quantities and disposition of hazardous wastes identified or listed in Section R315-2-9, R315-2-10, or R315-2-11.

4.44 SPECIAL REQUIREMENTS FOR GENERATORS OF BETWEEN 100 AND 1000 KG/MO

A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following requirements in R315-5-4:

(a) R315-5-4.40(a), (c), and (d);

(b) R315-5-4.42(b); and

(c) R315-5-4.43.

R315-5-5. Exports of Hazardous Waste.

The provisions of 40 CFR 262 subpart E, 262.50 - 262.58, 1996 ed., are adopted and incorporated by reference within this rule, except for the following changes:

(a) Other than in Section 40 CFR 262.53, substitute "Executive Secretary" for all references to "EPA" or "Regional Administrator".

(b) Paragraph 40 CFR 262.58(a) shall be as follows:

Any person who exports or imports hazardous waste as identified in 40 CFR 262.80(a) and is subject to the manifesting requirements of R315-5-2, or subject to the universal waste management standards as found in R315-16, to or from the countries listed in 40 CFR 262.58(a)(1), which R315-5-5 incorporates by reference, for recovery shall comply with R315-5-8, which incorporates by reference 40 CFR 262 subpart H. The requirements of subparts E and F do not apply.

R315-5-6. Imports of Hazardous Waste.

The requirements of 40 CFR 262.60, 1990 ed., are adopted and incorporated by reference.

R315-5-7. Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this rule or other standards in R315-3, R315-7, R315-8, and R315-13, which incorporates by reference 40 CFR 268, for those wastes provided he triple rinses each emptied pesticide container in accordance with R315-2-7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

R315-5-8. Transfrontier Shipments of Hazardous Waste for Recovery within the OECD.

The requirements of 40 CFR 262 subpart H, 262.80 - 262.89, 1996 ed., are adopted and incorporated by reference.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-6. Hazardous Waste Transporter Requirements.
R315-6-1. General.

1.10 SCOPE

(a) These hazardous waste transporter requirements establish standards which apply only to persons transporting hazardous waste within the State of Utah if the transportation requires a manifest as specified under R315-5.

(b) These rules do not apply to persons that transport hazardous waste on-site if they are either a hazardous waste generator or are owners or operators of an approved hazardous waste management facility.

(c) A transporter shall also comply with R315-5, if he:

(1) Transports hazardous waste from abroad into the State;

(2) Mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

(d) A transporter of hazardous waste subject to the manifesting requirements of R315-5, or subject to the waste management standards of R315-16, that is being imported from or exported to any of the countries listed in 40 CFR 262.58(a)(1), which R315-5-5 incorporates by reference, for purposes of recovery is subject to R315-6-1 and to all other relevant requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, including 40 CFR 262.84 for tracking documents.

1.11 IDENTIFICATION NUMBER

(a) A transporter shall not transport hazardous wastes without having received an EPA identification number from the Executive Secretary.

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Executive Secretary using EPA form 8700-12. Upon receiving the request, the Executive Secretary will assign an EPA identification number to the transporter.

1.12 TRANSFER FACILITY REQUIREMENTS

A transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less is not subject to regulation under R315-3, R315-7, R315-8, and R315-13, which incorporates by reference 40 CFR 268, with respect to the storage of those wastes.

R315-6-2. Compliance With the Manifest System and Recordkeeping.

2.20 THE MANIFEST SYSTEM

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of R315-5-2.20. In the case of exports other than those subject to R315-5-8, which incorporates by reference 40 CFR 262 subpart H, a transporter may not accept hazardous waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed in accordance with the provisions of R315-5-2.20, the waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest, or shipping paper for exports by water (bulk shipment). For exports of hazardous waste subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84, which R315-5-8 incorporates by reference.

(b) Before transporting the hazardous waste, the transporter shall hand sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator before leaving the generator's property.

(c) The transporter shall ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter shall ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility shall:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and

(2) Retain one copy of the manifest in accordance with R315-6-5; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of R315-6-2.10(c), (d), and (f) do not apply to water (bulk shipment) transporters if:

(1) The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generators certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the manifested facility; and

(5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with R315-6-2.22.

(f) For shipments involving rail transportation, the requirements of R315-6-2.20(c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a non-rail transporter, the initial rail transporter shall:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States.

(iv) Retain one copy of the manifest and rail shipping paper in accordance with R315-6-2.22.

(2) Rail transporters shall ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

(3) When delivering hazardous waste to the designated facility, a rail transporter shall:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper, if the manifest has not been received by the facility; and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with R315-6-2.22.

(4) When delivering hazardous waste to a non-rail transporter a rail transporter shall:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with

R315-6-2.22.

(5) Before accepting hazardous waste from a rail transporter, a non-rail transporter shall sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States shall:

(1) Indicate on the manifest the date the hazardous waste left the United States; and

(2) Sign the manifest and retain one copy as specified in R315-6-2.22(d); and

(3) Return a signed copy of the manifest to the generator; and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms of hazardous waste in a calendar month need not comply with the requirements of R315-6-2.20 or those of R315-6-2.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in R315-5-2.20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

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

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(i) A transporter shall not transport hazardous waste not properly labeled or hazardous waste containers which are leaking or appear to be damaged, since those packages become the transporter's responsibility during transport.

2.21 COMPLIANCE WITH THE MANIFEST

(a) The transporter shall deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(1) The designated facility listed on the manifest; or

(2) The alternate designated facility, if the hazardous waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) The next designated transporter; or

(4) The place outside the United States designated by the generator.

(b) If the hazardous waste cannot be delivered in accordance with R315-6-2.21(a), the transporter shall contact the generator for further directions and shall revise the manifest according to the generator's instructions.

2.22 RECORDKEEPING

(a) A transporter of hazardous waste shall keep a copy of the manifest signed by the generator, himself, and the next designated transporter of the owner or operator of the designated facility for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(b) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper containing all the information required in R315-6-2.20(e)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(c) For shipments of hazardous waste by rail within the United States:

(1) The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in R315-6-2.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(2) The final rail transporter shall keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(d) A transporter who transports hazardous waste out of the United States shall keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(e) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Executive Secretary.

R315-6-10. Emergency Controls.

Transporters shall comply with R315-9 in the event of a discharge of hazardous waste.

R315-6-11. Compliance with Department of Transportation Regulations.

Transporters of hazardous waste shall comply with the following pertinent regulations of the U.S. Department of Transportation governing the transportation of hazardous materials for both interstate and intrastate shipments:

(a) 49 CFR 171, General Information Regulations and Definitions;

(b) 49 CFR 172, Hazardous Materials Table and Hazardous Material Communications Regulations;

(c) 49 CFR 173, Shippers - General Requirements for Shipments and Packaging;

(d) 49 CFR 174, Carriage by Rail;

(e) 49 CFR 175, Carriage by Aircraft;

(f) 49 CFR 176, Carriage by Vessel;

(g) 49 CFR 177, Carriage by Public Highway;

(h) 49 CFR 178, Shipping Container Specification; and

(i) 49 CFR 179, Specifications for Tank Cars.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-7-8. General Interim Status Requirements.

8.1 PURPOSE, SCOPE, APPLICABILITY

(a) The purpose of R315-7 is to establish minimum State of Utah standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in R315-7-30, which incorporates by reference 40 CFR 265.1080(b), the standards of R315-7 and of R315-8-21, which incorporates by reference 40 CFR 264.552 through 264.554, apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements of interim status under State or Federal requirements and R315-3-2.1 until either a permit is issued under R315-3 or until applicable R315-7 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010(a) of RCRA or failed to file part A of the permit application as required by R315-3-2.1(d) and (f). These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in R315-7 or R315-2.

(c) The requirements of R315-7 do not apply to the following:

(1) The owner or operator of a POTW with respect to the treatment or storage of hazardous wastes which are delivered to the POTW;

(2) The owner or operator of a facility approved by the State of Utah to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-7 by R315-2-5;

(3) The owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2), (3), and (4), which is incorporated by reference in R315-2-6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR subpart D, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, and R315-14-6, which incorporates by reference 40 CFR 266 subpart G;

(4) A generator accumulating hazardous waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34, except to the extent the requirements are included in R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(5) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(6) The owner or operator of a totally enclosed treatment facility, as defined in R315-1;

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in the Table of Treatment Standards for Hazardous Wastes in 40 CFR 268.40 as incorporated by reference at R315-13, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in R315-7-9.8(b);

(8) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(9)(i) Except as provided in R315-7-8(c)(9)(i), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this section shall comply with all applicable requirements of R315-7-10 and R315-7-11.

(iii) Any person who is covered by R315-7-8(c)(9)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-7 and of R315-3 for those activities.

(10) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and R315-7-9.8(b), R315-7-16.2 and R315-7-16.3 are complied with;

(11) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9) handling the wastes listed below. These handlers are subject to regulation under section R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury thermostats as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.5

(d) Notwithstanding any other provisions of these rules enforcement actions may be brought pursuant to R315-2-14 or Section 19-6-115 Utah Solid and Hazardous Waste Act.

(e) The following hazardous wastes shall not be managed at facilities subject to regulation under R315-7.

(1) EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(ii) The waste is stored in tanks or containers;

(iii) The waste is stored or treated in waste piles that meet the requirements of R315-8-12.1(c) as well as all other applicable requirements of R315-8-12;

(iv) The waste is burned in incinerators that are certified pursuant to the standard and procedures in R315-7-22.6; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in R315-7-23.7.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268, and the R315-13 standards are considered material conditions or requirements of the R315-7 interim status standards.

R315-7-9. General Facility Standards.

9.1 APPLICABILITY

The rules in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-7-8.1.

9.2 IDENTIFICATION NUMBER

Every facility owner or operator shall apply for an EPA identification number in accordance with Section 3010 of RCRA. Facility owners or operators who did not obtain an EPA Identification Number for their facilities through the notification process shall obtain one. Information on obtaining this number can be acquired by contacting the Utah Division of Solid and Hazardous Waste Management.

9.3 REQUIRED NOTICES

(a)(1) An owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Board in writing at least four weeks in advance of the expected date of arrival of these shipments at the facility. A notice of subsequent shipments of the same waste from the same foreign sources is not required.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to R315-5-15, which incorporates by reference 40 CFR 262, subpart H, shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years.

(b) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of R315-7 and R315-3. An owner's or operator's failure to notify the new owner or operator of the requirements of R315-7 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

9.4 GENERAL WASTE ANALYSIS

The requirements of 40 CFR 265.13, 1996 ed., are adopted and incorporated by reference.

9.5 SECURITY

(a) A facility owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility; unless

(1) Physical contact with the waste, structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(2) Disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility will not cause a violation of the requirements of R315-7.

(b) Unless exempt under R315-7-9.5(a)(1) and (a)(2), facilities shall have;

(1) A 24-hour surveillance system, e.g., television monitoring or surveillance by guards or facility personnel, which continuously monitors and controls entry onto the active portion of the facility; or

(2)(i) An artificial or natural barrier or both, e.g. a fence in good repair or a cliff, which completely surrounds the active portion of the facility; and

(ii) A means to control entry at all times through the gates or other entrances to the active portion of the facility, e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility.

The requirements of R315-7-9.5(b) are satisfied if the facility or plant within which the active portion is located itself has a surveillance system or a barrier and a means to control entry which complies with the requirements of R315-7-9.5(b)(1) and (2).

(c) Unless exempt under R315-7-9.5(a)(1) and (a)(2), a sign with the legend, "Danger -Unauthorized Personnel Keep Out", shall be posted at each entrance to the active portion of a facility and at other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and any other language predominant in the area surrounding the facility and shall be legible from a distance of at least twenty-five feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion is potentially dangerous.

Owners or operators are encouraged to also describe on the sign the type of hazard, e.g., hazardous waste, flammable wastes, etc., contained within the active portion of the facility. See R315-7-14.7(b) for discussion of security requirements at disposal facilities during the post-closure care period.

9.6 GENERAL INSPECTION REQUIREMENTS

(a) Facility owners or operators shall inspect their facilities for malfunctions and deterioration, operator errors, and discharges, which may be causing or may lead to (1) release of hazardous waste constituents to the environment or (2) a threat to human health. These inspections shall be conducted frequently enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) Facility owners or operators shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment, e.g., dikes and sump pumps, that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The schedule shall be kept at the facility.

(3) The schedule shall identify the types of problems, e.g., malfunctions or deterioration, which are to be looked for during the inspection, e.g., inoperative sump pump, leaking fitting, eroding dike, etc.

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas shall be inspected daily when in use. At a minimum, the inspection schedule shall include the items and frequencies called for in R315-7-16.5, R315-7-17, which incorporates by reference 40 CFR 265.190 - 265.201, R315-7-18.5, R315-7-19.12, R315-7-20.5, R315-7-21.12, R315-7-22.4, R315-7-23.4, R315-7-24.4, R315-7-26, which incorporates by reference 40 CFR 265.1033, R315-7-27, which incorporates by reference 40 CFR 265.1052, 265.1053, and 265.1058 and R315-7-30, which incorporates by reference 40 CFR 265.1084 through 265.1090.

(c) The owner or operator shall remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall keep records of inspections in an inspection log or summary. These records shall be retained for at least three years. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs made or remedial actions taken.

9.7 PERSONNEL TRAINING

(a)(1) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of R315-7, and that includes all the elements described in R315-7-9.7(d)(3).

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction supplementing the facility personnel's existing job knowledge, which teaches facility personnel hazardous waste management procedures, including contingency plan

implementation, relevant to the positions in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, but not necessarily limited to, the following, where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off systems;

(iii) Communications or alarm systems or both;

(iv) Response to fires or explosions;

(v) Response to groundwater contamination incidents; and

(vi) Shutdown of operations.

(b) Facility personnel shall successfully complete the program required in R315-7-9.7(a) within six months after the effective date of these rules or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these rules shall not work in unsupervised positions until they have completed the training requirements of R315-7-9.7(a).

(c) Facility personnel shall take part in an annual review of their initial training in R315-7-9.7(a).

(d) Owners or operators of facilities shall maintain the following documents and records at their facilities and make them available to the Board or its duly appointed representative upon request:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under R315-7-9.7(d)(1). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications and duties of facility personnel assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under R315-7-9.7(d)(1); and

(4) Records that document that the training or job experience required under paragraphs R315-7-9.7(a), (b), and (c) has been given to, and completed by, facility personnel.

(e) Training records on current personnel shall be maintained until closure of the facility; training records on former employees shall be maintained for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

9.8 GENERAL REQUIREMENTS FOR IGNITABLE, REACTIVE, OR INCOMPATIBLE WASTES

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks, static, electrical, or mechanical, spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flames to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by R315-7, the treatment, storage, or disposal of ignitable or reactive waste and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, shall be conducted so that it does not:

(1) Generate uncontrolled extreme heat or pressure, fire or explosion, or violent reaction;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion;

(4) Damage the structural integrity of the device or facility containing the waste; or

(5) Through other like means threaten human health or the environment.

9.9 LOCATION STANDARDS

The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

9.10 CONSTRUCTION QUALITY ASSURANCE PROGRAM

(a) CQA program. (1) A construction quality assurance, CQA, program is required for all surface impoundment, waste pile, and landfill units that are required to comply with R315-7-18.9(a), R315-7-19.9, and R315-7-21.10(a). The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes, flexible membrane liners;

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) Written CQA plan. Before construction begins on a unit subject to the CQA program under R315-7-9.10(a), the owner or operator shall develop a written CQA plan. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in R315-7-9.10(a)(2), including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under R315-7-12.4.

(c) Contents of program. (1) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in R315-7-9.10(a)(2);

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components, e.g., pipes, according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under R315-8-11.2, R315-8-12.2,

and R315-8-14.2.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full-scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of R315-8-11.2(c)(1), R315-8-12.2(c)(1), and R315-8-14.2(c)(1) in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The test fill requirement is waived where data are sufficient to show that a constructed soil liner meets the hydraulic conductivity requirements of R315-8-11.2(c)(1), R315-8-12.2(c)(1), and R315-8-14.2(c)(1) in the field.

(d) Certification. The owner or operator of units subject to R315-7-9.10 shall submit to the Executive Secretary by certified mail or hand delivery, at least 30 days prior to receiving waste, a certification signed by the CQA officer that the CQA plan has been successfully carried out and that the unit meets the requirements of R315-8-11.2(a), R315-8-12.2, or R315-8-14.2(a). The owner or operator may receive waste in the unit after 30 days from the Executive Secretary's receipt of the CQA certification unless the Executive Secretary determines in writing that the construction is not acceptable, or extends the review period for a maximum of 30 more days, or seeks additional information from the owner or operator during this period. Documentation supporting the CQA officer's certification shall be furnished to the Executive Secretary upon request.

R315-7-10. Preparedness and Prevention.

10.1 APPLICABILITY

The rules in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-7-8.1.

10.2 MAINTENANCE AND OPERATION OF FACILITY

Facilities shall be maintained and operated to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

10.3 REQUIRED EQUIPMENT

All facilities shall be equipped with the following, unless there are no hazards posed by waste handled at the facility which could require a particular kind of equipment specified below:

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

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

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

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

10.4 TESTING AND MAINTENANCE OF EQUIPMENT

All facility communications or alarm systems, fire protection equipment, safety equipment, discharge control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

10.5 ACCESS TO COMMUNICATIONS OR ALARM SYSTEM

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all employees involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless a device is not required under R315-7-10.3.

(b) If there is just one employee on the premises while the facility is operating, he shall have immediate access to a device capable of summoning external emergency assistance, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, unless a device is not required under R315-7-10.3.

10.6 REQUIRED AISLE SPACE

The facility owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, discharge control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

10.7 ARRANGEMENTS WITH LOCAL AUTHORITIES

(a) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

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

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

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

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

(b) Where state or local authorities decline to enter into these arrangements, the owner or operator shall document the refusal in the operating record.

R315-7-11. Contingency Plan and Emergency Procedures.

11.1 APPLICABILITY

The rules in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-7-8.1.

11.2 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

(a) Each owner or operator shall have a contingency plan for his facility designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water.

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

11.3 CONTENT OF CONTINGENCY PLAN

(a) The contingency plan shall describe the actions facility personnel shall take to comply with R315-7-11.2 and R315-7-11.7 in response to fires, explosions, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If a facility owner or operator already has prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or

contingency plan, he need only amend that plan to incorporate hazardous waste management provisions sufficient to comply with the requirements of R315-7.

(c) The plan shall describe arrangements agreed to by local law enforcement agencies, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, in accordance with R315-7-10.7.

(d) The plan shall list names, addresses, phone numbers, office and home, of all persons qualified to act as facility emergency coordinator, see R315-7-11.6, and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

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

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

11.4 COPIES OF CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

(a) Maintained at the facility;

(b) Made available to the Board or its duly appointed representative upon request; and

(c) Submitted to all local law enforcement agencies, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

11.5 AMENDMENT OF CONTINGENCY PLAN

The contingency plan shall be reviewed, and immediately amended, if necessary, under any of the following circumstances:

(a) Revisions to applicable regulations;

(b) Failure of the plan in an emergency;

(c) Changes in the facility design, construction, operation, maintenance, or other circumstances that materially increase the potential for discharges of hazardous waste or hazardous waste constituents, or change the response necessary in an emergency;

(d) Changes in the list of emergency coordinators; or

(e) Changes in the list of emergency equipment.

11.6 EMERGENCY COORDINATOR

At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This facility emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in R315-7-11.7. Applicable responsibilities for the emergency coordinator vary depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.

11.7 EMERGENCY PROCEDURES

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

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

(2) Notify appropriate state or local agencies with designated response roles whenever their assistance is needed.

(b) In the event of a discharge, fire, or explosion, the facility's emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any discharged materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

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

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

(1) If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to assist appropriate officials in making the decision whether local areas should be evacuated; and

(2) He shall immediately notify both the Utah State Department of Environmental Quality as specified in R315-9 and the government officials designated as the on-scene coordinator for that geographical area, in the applicable regional contingency plan under 40 CFR 1510, or the National Response Center, 800/424-8802. The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident, e.g., discharge, fire;

(iv) Name and quantity of material(s) involved, to the extent available;

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

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

(e) During an emergency, the facility's emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and discharges do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing discharged waste, and removing or isolating containers.

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

(g) Immediately after an emergency, the facility's emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a discharge, fire, or explosion at the facility.

Unless the owner or operator can demonstrate, in accordance with R315-2-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements in R315-4, R315-5, R315-7, and R315-8.

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

(1) No waste that may be incompatible with the

discharged material is treated, stored, or disposed of until cleanup procedures are completed; and

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

(i) The facility owner or operator shall notify the Board and other appropriate state and local authorities, that the facility is in compliance with R315-7-11.7(h) before operations are resumed in the affected area(s) of the facility.

(j) The facility owner or operator shall record in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Board. The report shall include:

(1) Name, address, and telephone number of the owner or operator;

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

(3) Date, time, and type of incident, e.g., fire, discharge;

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

(5) The extent of injuries, if any;

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

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

R315-7-12. Manifest System, Recordkeeping, and Reporting.

12.1 APPLICABILITY

The rules in R315-7-12 apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-7-8.1. R315-7-12.2, R315-7-12.3, and R315-7-12.7 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

12.2 USE OF MANIFEST SYSTEM

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest, as defined in R315-7-12.3, on each copy of the manifest;

The Board does not intend that the owner or operator of a facility whose procedures under R315-7-9.4(c) include waste analysis shall perform that analysis before signing the manifest and giving it to the transporter. R315-7-12.3(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures) the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper, if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in R315-7-12.3(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper;

(3) Immediately give the rail or water, bulk shipment, transporter at least one copy of the manifest or shipping paper, if the manifest has not been received;

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, shall send a copy of the signed and dated shipping paper to the generator; and

(5) Retain at the facility a copy of the manifest and shipping paper, if signed in lieu of the manifest at the time of delivery for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of R315-5.

The provisions of R315-5-9.1 are applicable to the on-site accumulation of hazardous wastes by generators and only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to R315-5-15, which incorporates by reference 40 CFR 262 subpart H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

12.3 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are: (1) for bulk waste, variations greater than ten percent in weight, and (2) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest.

(b) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, e.g., with telephone conversations. If the discrepancy is not resolved within 15 days of receipt of the waste, the owner or operator shall immediately submit a letter describing the discrepancy, and attempts to reconcile it, including a copy of the manifest at issue, to the Board.

12.4 OPERATING RECORD

The requirements as found in 40 CFR 265.73, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference.

12.5 AVAILABILITY, RETENTION, AND DISPOSITION OF RECORDS

(a) All records, including plans, required under R315-7 shall be furnished upon written request, and made available at all reasonable times for inspection.

(b) The retention period for all records required under R315-7 is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Board.

(c) A copy of records of waste disposal locations required to be maintained under R315-7-12.4, which incorporates by reference 40 CFR 265.73, shall be turned over to the Board and the local land authority upon closure of the facility, see R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120.

12.6 BIENNIAL REPORT

Owners or operators of facilities that treat, store, or dispose of hazardous waste shall prepare and submit a single copy of a biennial report to the Board by March 1 of each even numbered

year. The biennial report shall be submitted on EPA form 8700-13B. The biennial report shall cover facility activities during the previous calendar year and shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which a hazardous waste was received during the year; for imported shipments, the name and address of the foreign generator shall be given;

(d) A description and the quantity of each hazardous waste received by the facility during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(e) The method(s) of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data, where required under R315-7-13.5(a)(2)(ii) and (iii) and (b)(2) where required;

(g) The most recent closure cost estimate under R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150;

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984;

(j) The certification signed by the owner or operator of the facility or his authorized representative.

12.7 UNMAINFESTED WASTE REPORT

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in R315-4-3(e)(2) of these rules, and if the waste is not excluded from the manifest requirements by R315-2-2, then the owner or operator shall prepare and submit a single copy of a report to the Board within 15 days after receiving the waste. These reports shall be designated "Unmanifested Waste Report" and include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The date the facility received the waste;

(c) The EPA identification number, name, and address of the generator and the transporter, if available;

(d) A description and the quantity of each unmanifested hazardous waste the facility received;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) The certification signed by the owner or operator of the facility or his authorized representative; and

(g) A brief explanation of why the waste was unmanifested, if known.

Small quantities of hazardous waste are excluded from regulation under R315-7 and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the owner or operator should obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the owner or operator should file an unmanifested waste report for the hazardous waste movement.

12.8 ADDITIONAL REPORTS

In addition to the biennial and unmanifested waste reporting requirements described in R315-7-12.6, and R315-7-12.7, a facility owner or operator shall also report to the Board:

(a) Discharges, fires, and explosions as specified in R315-7-11.7(j);

(b) Groundwater contamination and monitoring data as specified in R315-7-13.4 and R315-7-13.5;

(c) Facility closure as specified in R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120;

(d) Upon its request, all information as the Board may deem necessary to determine compliance with the requirements of R315-7;

(e) As otherwise required by R315-7-26, which incorporates by reference 40 CFR 265.1030 - 265.1035, R315-7-27, which incorporate by reference 40 CFR 265 265.1050 - 265.1064 and R315-7-30, which incorporates by reference 40 CFR 265.1080 - 265.1091.

R315-7-13. Groundwater Monitoring.

13.1 APPLICABILITY

(a) The owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste shall implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as R315-7-8.1 and R315-7-13.1(c) provide otherwise.

(b) Except as R315-7-13.1(c) and (d) provide otherwise, the owner or operator shall install, operate, and maintain a groundwater monitoring system which meets the requirements of R315-7-13.2, and shall comply with R315-7-13.3 - R315-7-13.5. This groundwater monitoring program shall be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.

(c) All or part of the groundwater monitoring sampling and analysis requirements of this section may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells, domestic, industrial, or agricultural, or to surface water. This demonstration shall be in writing, and shall be kept at the facility. This demonstration shall be certified by a qualified geologist or geotechnical engineer and shall establish the following:

(1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(i) A water balance of precipitation, evapotranspiration, run-off, and infiltration; and

(ii) Unsaturated zone characteristics, i.e., geologic materials, physical properties, and depth to groundwater; and

(2) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(i) Saturated zone characteristics, i.e., geologic materials, physical properties, and rate of groundwater flow; and

(ii) The proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes, or knows, that groundwater monitoring of indicator parameters in accordance with R315-7-13.2 and R315-7-13.3 would show statistically significant increases, or decreases in the case of pH, when evaluated under R315-7-13.4(b), he may install, operate, and maintain an alternate groundwater monitoring system, other than the one described in R315-7-13.2 and R315-7-13.3. If the owner or operator decides to use an alternate groundwater monitoring system he shall:

(1) Submit to the Board a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of R315-7-13.4(d)(3) for an alternate groundwater monitoring system;

(2) Initiate the determinations specified in R315-7-13.4(d)(4);

(3) Prepare and submit a written report in accordance with R315-7-13.4(d)(5);

(4) Continue to make the determinations specified in

R315-7-13.4(d)(4) on a quarterly basis until final closure of the facility; and

(5) Comply with the recordkeeping and reporting requirements in R315-7-13.5(d).

(e) The groundwater monitoring requirements of this section may be waived with respect to any surface impoundment that (1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristics under R315-2-9 or are listed as hazardous wastes in R315-2-10 only for this reason, and (2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstration must be established, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

(f) The Executive Secretary may replace all or part of the requirements of R315-7-13 applying to a regulated unit, as defined in R315-8-6, with alternative requirements developed for groundwater monitoring set out in an approved closure or post-closure plan or in an enforceable document, as defined in R315-3-1.1(e)(7), where the Executive Secretary determines that:

(1) A regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the requirements of R315-7-13 because the alternative requirements will protect human health and the environment. The alternative standards for the regulated unit must meet the requirements of R315-8-6.12(a).

13.2 GROUNDWATER MONITORING SYSTEM

(a) A groundwater monitoring system shall be capable of yielding groundwater samples for analysis and shall consist of:

(1) Monitoring wells, at least one, installed hydraulically upgradient, i.e., in the direction of increasing static head from the limit of the waste management area. Their number, locations, and depths shall be sufficient to yield groundwater samples that are:

(i) Representative of background groundwater quality in the uppermost aquifer near the facility; and

(ii) Not affected by the facility.

(2) Monitoring wells, at least three, installed hydraulically downgradient, i.e., in the direction of decreasing static head, at the limit of the waste management area. Their number, locations, and depths shall ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(3) The facility owner or operator may demonstrate that an alternate hydraulically downgradient monitoring well location will meet the criteria outlined below. The demonstration must be in writing and kept at the facility. The demonstration must be certified by a qualified ground-water scientist and establish that:

(i) An existing physical obstacle prevents monitoring well installation at the hydraulically downgradient limit of the waste management area; and

(ii) The selected alternate downgradient location is as close to the limit of the waste management area as practical; and

(iii) The location ensures detection that, given the alternate location, is as early as possible of any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(iv) Lateral expansion, new, or replacement units are not eligible for an alternate downgradient location under this paragraph.

(b) Separate monitoring systems for each waste management component of the facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(1) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary perimeter.

(2) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imaginary boundary line which circumscribes the several waste management components.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space, i.e., the space between the bore hole and well casing above the sampling depth shall be sealed with a suitable material, e.g., cement grout or bentonite slurry, to prevent contamination of samples and the ground water.

13.3 SAMPLING AND ANALYSIS

(a) The owner or operator shall obtain and analyze samples from the installed groundwater monitoring system. The owner or operator shall develop and follow a groundwater sampling and analysis plan. He shall keep this plan at the facility. The plan shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

See "Procedures Manual for Groundwater Monitoring at Solid Waste Disposal Facilities," EPA-530/SW-611, August 1977 and "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1979 for discussions of sampling and analysis procedures.

(b) The owner or operator shall determine the concentration or value of the following parameters in groundwater samples in accordance with R315-7-13.3(c) and (d):

(1) Parameters characterizing the suitability of the groundwater as a drinking water supply, as specified in R315-50-3, which incorporates by reference 40 CFR 265, Appendix III.

(2) Parameters establishing groundwater quality:

(i) Chloride

(ii) Iron

(iii) Manganese

(iv) Phenols

(v) Sodium

(vi) Sulfate

These parameters are to be used as a basis for comparison in the event a groundwater quality assessment is required under R315-7-13.4(d).

(3) Parameters used as indicators of groundwater contamination:

(i) pH

(ii) Specific Conductance

(iii) Total Organic Carbon

(iv) Total Organic Halogen

(c)(1) For all monitoring wells, the owner or operator shall establish initial background concentrations or values of all parameters specified in R315-7-13.3(b). He shall do this quarterly for one year.

(2) For each of the indicator parameters specified in R315-7-13.3(b)(3), at least four replicate measurements shall be obtained for each sample and the initial background arithmetic

mean and variance shall be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(d) After the first year, all monitoring wells shall be sampled and the samples analyzed with the following frequencies:

(1) Samples collected to establish groundwater quality shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(2) at least annually.

(2) Samples collected to indicate groundwater contamination shall be obtained and analyzed for the parameters specified in R315-7-13.3(b)(3) at least semiannually.

(e) Elevation of the groundwater surface at each monitoring well shall be determined each time a sample is obtained.

13.4 PREPARATION, EVALUATION, AND RESPONSE

(a) The owner or operator shall prepare an outline of a groundwater quality assessment program. The outline shall describe a more comprehensive groundwater monitoring program, than that described in R315-7-13.2 and R315-7-13.3, capable of determining:

(1) Whether hazardous waste or hazardous waste constituents have entered the groundwater;

(2) The rate and extent of migration of hazardous waste or hazardous waste constituents in the groundwater; and

(3) The concentrations of hazardous waste or hazardous waste constituents in the groundwater.

(b) For each indicator parameter specified in R315-7-13.3(b)(3), the owner or operator shall calculate the arithmetic mean and variance, based on at least four replicate measurements on each sample, for each well monitored in accordance with R315-7-13.3(d)(2) and compare these results with its initial background arithmetic mean. The comparison shall consider individually each of the wells in the monitoring system, and shall use the Students t-test at the 0.01 level of significance, see R315-50-4, to determine statistically significant increases, and decreases, in the case of pH, over initial background.

(c)(1) If the comparisons for the upgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall submit this information in accordance with R315-7-13.5(a)(2)(ii).

(2) If the comparisons for downgradient wells made under R315-7-13.4(b) show a significant increase, or pH decrease, the owner or operator shall then immediately obtain additional groundwater samples from those downgradient wells where a significant difference was detected, split the samples in two, and expeditiously obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(d)(1) If the analyses performed under R315-7-13.4(c)(2) confirm the significant increase, or pH decrease, the owner or operator shall provide written notice to the Board--within seven days of the date of the confirmation--that the facility may be affecting groundwater quality.

(2) Within 15 days after the notification under R315-7-13.4(d)(1), the owner or operator shall develop and submit to the Board a specific plan, based on the outline required under R315-7-13.4(a) and certified by a qualified geologist or geotechnical engineer, for a groundwater quality assessment program at the facility.

(3) The plan to be submitted under R315-7-13.1(d)(1) or R315-7-13.4(d)(2) shall specify:

(i) The number, location, and depth of wells;

(ii) Sampling and analytical methods for those hazardous wastes or hazardous waste constituents in the facility;

(iii) Evaluation procedures, including any use of previously-gathered groundwater quality information; and

(iv) A schedule of implementation.

(4) The owner or operator shall implement the groundwater quality assessment plan which satisfies the requirements of R315-7-13.4(d)(3), and, at a minimum, determine:

(i) The rate and extent of migration of the hazardous waste or hazardous waste constituents in the groundwater; and

(ii) The concentrations of the hazardous waste or hazardous waste constituents in the groundwater.

(5) The owner or operator shall make his first determination under R315-7-13.4(d)(4) as soon as technically feasible, and, within 15 days after that determination submit to the Board a written report containing an assessment of the groundwater quality.

(6) If the owner or operator determines, based on the results of the first determination under R315-7-13.4(d)(4), that no hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he may reinstate the indicator evaluation program described in R315-7-13.3 and R315-7-13.4(b). If the owner or operator reinstates the indicator evaluation program, he shall so notify the Board in the report submitted under R315-7-13.4(d)(5).

(7) If the owner or operator determines, based on the first determination under R315-7-13.4(d)(4), that hazardous waste or hazardous waste constituents from the facility have entered the groundwater, then he:

(i) Must continue to make the determinations required under R315-7-13.4(d)(4) on a quarterly basis until final closure of the facility, if the groundwater quality assessment plan was implemented prior to final closure of the facility; or

(ii) May cease to make the determinations required under R315-7-13.4(d)(4), if the groundwater quality assessment plan was implemented during the post-closure care period.

(e) Notwithstanding any other provision of R315-7-13, any groundwater quality assessment to satisfy the requirements of R315-7-13.4(d)(4) which is initiated prior to final closure of the facility shall be completed and reported in accordance with R315-7-13.4(d)(5).

(f) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), at least annually the owner or operator shall evaluate the data on groundwater surface elevations obtained under R315-7-13.3(e) to determine whether the requirements under R315-7-13.2(a) for locating the monitoring wells continues to be satisfied. If the evaluation shows that R315-7-13.2(a) is no longer satisfied, the owner or operator shall immediately modify the number, location, or depth of the monitoring wells to bring the groundwater monitoring system into compliance with this requirement.

13.5 RECORDKEEPING AND REPORTING

(a) Unless the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses required in R315-7-13.3(c) and (d), the associated groundwater surface elevations required in R315-7-13.3(e), and the evaluations required in R315-7-13.4(b) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Report the following groundwater monitoring information to the Board:

(i) During the first year when initial background concentrations are being established for the facility: concentrations or values of the parameters listed in R315-7-13.3(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator shall separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in 40 CFR 265, Appendix III.

(ii) Annually: concentrations or values of the parameters listed in R315-7-13.3(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under R315-7-13.4(b). The owner or operator shall separately identify any significant differences from initial background found in the upgradient wells, in accordance with R315-7-13.4(c)(1). During the active life of the facility, this information shall be submitted no later than March 1 following each calendar year.

(iii) No later than March 1 following each calendar year: results of the evaluation of groundwater surface elevations under R315-7-13.4(f), and a description of the response to that evaluation, where applicable.

(b) If the groundwater is monitored to satisfy the requirements of R315-7-13.4(d)(4), the owner or operator shall:

(1) Keep records of the analyses and evaluations specified in the plan, which satisfies the requirements of R315-7-13.4(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) Annually, until final closure of the facility, submit to the Board a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This report shall be submitted no later than March 1, following each calendar year.

R315-7-14. Closure and Post-Closure.

The requirements as found in 40 CFR 265 subpart G (265.110 - 265.121), 1998 ed., as amended by 63 FR 56710, October 22, 1998, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Board" for all references to "Administrator" or "Regional Administrator".

(b) Substitute the word "appointee" for "employee."

(c) Substitute "Board" for "Agency."

(d) Substitute 19-6 for references to RCRA.

R315-7-15. Financial Requirements.

The requirements as found in 40 CFR 265 subpart H (265.140 - 265.150), 1998 ed., as amended by 63 FR 56710, October 22, 1998, are adopted and incorporated by reference with the following exceptions:

(a) substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator."

(b) substitute "Board" for all references to "Agency" or "EPA".

(c) substitute "The Utah Solid and Hazardous Waste Act" for all references to "the Resource Conservation and Recovery Act" or "RCRA."

R315-7-16. Use and Management of Containers.

16.1 APPLICABILITY

The rules in this section apply to the owners or operators of all hazardous waste management facilities that store containers of hazardous waste, except as provided otherwise in R315-7-8.1.

16.2 CONDITION OF CONTAINERS

The container holding hazardous waste shall be in good condition and shall not leak. If a container is not in good condition, or if it begins to leak, the owner or operator shall transfer the hazardous waste from the container to a storage container that is in good condition, or manage the waste in another fashion which complies with the requirements of R315-7.

16.3 COMPATIBILITY OF WASTE WITH CONTAINER

Owners or operators shall use containers made of or lined with materials which will not react with, and are otherwise compatible with, the waste to be stored, so that the ability of the container to contain the waste is not impaired.

16.4 MANAGEMENT OF CONTAINERS

(a) A container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

Reuse of containers is also governed by the U.S. Department of Transportation regulations, including those set forth in 49 CFR 173.28.

16.5 INSPECTIONS

In addition to the inspections required by R315-7-9.6, the owner or operator shall inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. See R315-7-16.2 for remedial action required if deterioration or leaks are detected.

16.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Containers holding ignitable or reactive waste shall be located more than 15 meters, 50 feet, from the facility's property line.

See R315-7-9.8 for additional requirements.

16.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTE

(a) Incompatible wastes or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same container, unless R315-79.8(b) is complied with.

(b) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material, see 40 CFR 265, Appendix V for examples, unless R315-7-9.8(b) is complied with.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, open tanks, piles, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous wastes or hazardous constituents which could result from the mixing of incompatible materials.

16.8 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of R315-7-26, which incorporates by reference 40 CFR subpart AA, R315-7-27, which incorporates by reference 40 CFR subpart BB, and R315-7-30, which incorporates by reference 40 CFR subpart CC.

R315-7-17. Tanks.

The requirements as found in 40 CFR 265 subpart J, 265.190-265.202, 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Executive Secretary" for all references to "Regional Administrator" found in 40 CFR 265 subpart J with the exception of 40 CFR 265.193(g) and (h)(5), which will replace "Regional Administrator" with "Board".

(b) Add, following January 12, 1988, in 40 CFR 265.191(a), "or by December 16, 1988, for non-HSWA existing tank systems."

(c) Replace 40 CFR 265.193(a)(2) to (4) with the following corresponding paragraphs:

(1) For all HSWA existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, or

within two years after December 16, 1988, for non-HSWA existing tank systems;

(2) For those HSWA existing tank systems of known and documented age, within two years after January 12, 1987, or within two years after December 16, 1988, for non-HSWA existing tank systems, or when the tank system has reached 15 years of age, whichever comes later;

(3) For those HSWA existing tank systems for which the age cannot be documented, within eight years of January 12, 1987, or within eight years of December 16, 1988, for non-HSWA existing tank systems; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, or within two years of December 16, 1988, for non-HSWA existing tank systems, whichever comes later; and

(d) Add, following the last January 12, 1987, in 40 CFR 265.193(a)(5), "or December 16, 1988, for non-HSWA tank systems."

R315-7-18. Surface Impoundments.

18.1 APPLICABILITY

The rules in this section apply to the owners and operators of facilities that use surface impoundments for the treatment, storage, or disposal of hazardous waste, except as provided otherwise in R315-7-8.1.

18.2 ACTION LEAKAGE RATE

(a) The owner or operator of surface impoundment units subject to R315-7-18.9(a) must submit a proposed action leakage rate to the Executive Secretary when submitting the notice required under R315-7-18.9(b). Within 60 days of receipt of the notification, the Executive Secretary will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Executive Secretary before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-7-18.9(a). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-7-18.5(b), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit closes in accordance with R315-7-18.6, which incorporates by reference 40 CFR 265.228(a)(2), monthly during the post-closure care period when monthly monitoring is required under R315-7-18.5(b).

18.3 CONTAINMENT SYSTEM

All earthen dikes shall have a protective cover, such as grass, shale, or rock, to minimize wind and water erosion and to preserve their structural integrity.

18.4 WASTE ANALYSIS AND TRIAL TESTS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, whenever a surface impoundment is used to:

(1) Chemically treat a hazardous waste which is substantially different from waste previously treated in that impoundment; or

(2) Chemically treat hazardous waste with a substantially different process than any previously used in that impoundment; the owner or operator shall, before treating the different waste or using the different process:

(i) Conduct waste analyses and trial treatment tests, e.g., bench scale or pilot plant scale tests; or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this treatment will comply with R315-7-9.8(b).

The owner or operator shall record the results from each waste analysis and trial test in the operating record of the facility, see R315-7-12.4, which incorporates by reference 40 CFR 265.73.

18.5 MONITORING AND INSPECTIONS

(a) The owner or operator shall inspect:

(1) The freeboard level at least once each operating day to ensure compliance with R315-7-18.2, and

(2) The surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leads, deterioration, or failures in the impoundment.

(b)(1) An owner or operator required to have a leak detection system under R315-7-18.9(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with R315-7-18.2(a).

The owner or operator shall remedy any deterioration or malfunction he finds.

18.6 CLOSURE AND POST-CLOSURE

The requirements as found in 40 CFR 265.228, 1992 ed., are adopted and incorporated by reference.

18.7 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a surface impoundment, unless the waste and impoundment satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f); and

(2) R315-7-9.8(b) is complied with; or

(b)(1) The waste is managed in such a way that it is protected from any material or conditions which may cause it to

ignite or react; and

(2) Maintain and monitor the leak detection system in accordance with R315-8-11.2(c)(2)(iv) and (3) and R315-7-18.5(b) and comply with all other applicable leak detection system requirements of R315-7;

(3) The owner or operator obtains a certification from a qualified chemist or engineer that, to the best of his knowledge and opinion, the design features or operating plans of the facility will prevent ignition or reaction; and

(4) The certification and the basis for it are maintained at the facility; or

(c) The surface impoundment is used solely for emergencies.

18.8 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same surface impoundment, unless they will not generate heat, fumes, fires, or explosive reactions that could damage the structural integrity of the impoundment, or otherwise threaten human health or the environment.

18.9 DESIGN REQUIREMENTS

(a) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system between such liners, and operate the leachate collection and removal system, in accordance with R315-7-18.9(c), unless exempted under R315-7-18.9(d), (e), or (f). "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility."

(b) The owner or operator of each unit referred to in paragraph (a) of this section shall notify the Board at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice must file a part B application within six months of the receipt of the notice.

(c) The owner or operator of any replacement surface impoundment unit is exempt from R315-7-18.9(a) if:

(1) The existing unit was constructed in compliance with the design standards of Section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(d) The double liner requirement set forth in R315-7-18.9(a) may be waived by the Board for any monofill, if;

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and these wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in R315-2-9(g) with EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of R315-7-18.9(a) on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of the impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable given the specific site conditions and the nature and extent of contamination. If all contaminated soil is not removed or decontaminated, the owner or operator of the impoundment must comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action.

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR; 144.3; and

(C) The monofill is in compliance with applicable groundwater monitoring requirements for facilities with permits; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of R315-7-18.9(a) and in good faith compliance with R315-7-18.9(a) and with guidance documents governing liners and leachate collection systems under R315-7-18.9(a), no liner or leachate collection system which is different from that which was so installed pursuant to R315-7-18.9(a) will be required for the unit by the Board when issuing the first permit to the facility, except that the Board will not be precluded from requiring installation of a new liner when the Board has reason to believe that any liner installed pursuant to the requirements of R315-7-18.9(a) is leaking.

(f) A surface impoundment shall maintain enough freeboard to prevent overtopping of the dike by overfilling, wave action, or a storm. Except as provided in R315-7-18.2(b), there shall be at least 60 centimeters, two feet, of freeboard.

(g) A freeboard level less than 60 centimeters, two feet, shall be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with written identification of alternate design features or operating plans preventing overtopping, shall be maintained at the facility.

(h) Surface impoundments that are newly subject to R315-7-18 due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with R315-7-18.9(a), (c) and (d) not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under R315-13, which incorporates by Reference 40 CFR 268, or the granting of an extension to the effective date of a prohibition pursuant to 40 CFR 268.5, within this 48-month period.

18.10 RESPONSE ACTIONS

(a) The owner or operator of surface impoundment units subject to R315-7-18.9(a) shall submit a response action plan to the Executive Secretary when submitting the proposed action leakage rate under R315-7-18.2. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in R315-7-18.10(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions

taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-7-18.10(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator must submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-7-18.10(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

18.11 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of R315-7-27, which incorporates by reference 40 CFR subpart BB, and R315-7-30, which incorporates by reference 40 CFR subpart CC.

R315-7-19. Waste Piles.

19.1 APPLICABILITY

The rules in this section apply to the owners and operators of facilities that treat or store hazardous waste in piles, except as provided otherwise in R315-7-8.1. Alternatively, a pile of hazardous waste may be managed as a landfill under R315-7-21.

19.2 PROTECTION FROM WIND

The owners or operators of a pile containing hazardous waste which could be subject to dispersal by wind shall cover or otherwise manage the pile so that the wind dispersal is controlled.

19.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, owners or operators shall analyze a representative sample from each incoming shipment of waste before adding the waste to any existing pile, unless the only wastes the facility receives which are amenable to piling are compatible with each other, or the waste received is compatible with the waste in the pile to which it is to be added. The analysis conducted shall be capable of differentiating between the types of hazardous waste which are placed in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis shall include a visual comparison of color and texture. The results of these analyses shall be placed in the operating record.

19.4 CONTAINMENT

If leachate or run-off from a pile is a hazardous waste, then either:

(a)(1) The pile shall be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage;

(2) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm;

(3) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm; and

(4) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously to maintain design capacity of the system; or

(b)(1) The pile shall be protected from precipitation and run-on by some other means; and

(2) No liquids or wastes containing free liquids may be placed in the pile.

19.5 SPECIAL REQUIREMENTS FOR IGNITABLE WASTE

Ignitable waste shall not be placed in a pile unless the waste and waste pile satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) Addition of the waste to an existing pile results in the waste or mixture no longer meeting the definition of ignitable waste under R315-2-9(d), and complies with R315-7-9.8; or

(b) The waste is managed in such a way that it is protected from any material or conditions which may cause it to react.

19.6 REQUIREMENTS FOR REACTIVE WASTE

Reactive waste shall not be placed in a pile unless the waste and pile satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) Addition of the waste to an existing pile results in the waste or mixture no longer meeting the definition of reactive waste under R315-2-9(f) and complies with R315-7-9.8; or

(b) The waste is managed in such a way that it is protected from any material or condition which may cause it to react.

19.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTE

(a) Incompatible waste, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same pile unless, R315-7-9.8(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device. The purpose of this is to prevent gaseous emissions, fires, explosions, leaching or other discharge of hazardous waste or hazardous waste constituents which could result from the contact or mixing of incompatible wastes or materials.

(c) Hazardous waste shall not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with R315-7-9.8(b).

19.8 CLOSURE AND POST-CLOSURE CARE

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless R315-2-3(d) applies; or

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in R315-7-19.8(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills, R315-7-21.4.

19.9 DESIGN AND OPERATING REQUIREMENTS

The owner or operator of each new waste pile on which

construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each such replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with R315-8-12.2(c), unless exempted under R315-8-12.2(d), (e), or (f); and must comply with the procedures of R315-7-18.9(b). "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility".

19.10 ACTION LEAKAGE RATES

(a) The owner or operator of waste pile units subject to R315-7-19.9 shall submit a proposed action leakage rate to the Executive Secretary when submitting the notice required under R315-7-19.9. Within 60 days of receipt of the notification, the Executive Secretary will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Executive Secretary before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-7-19.9. The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under R315-7-19.12, to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period.

19.11 RESPONSE ACTIONS

(a) The owner or operator of waste pile units subject to R315-7-19.9 shall submit a response action plan to the Executive Secretary when submitting the proposed action leakage rate under R315-7-19.10. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-7-19.11(b).

(b) If the flow rate into the leak determination system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipts should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-7-19.11(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-7-19.11(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

19.12 MONITORING AND INSPECTION

An owner or operator required to have a leak detection system under R315-7-19.9 shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

R315-7-20. Land Treatment.

20.1 APPLICABILITY

The rules in this section apply to owners and operators of hazardous waste land treatment facilities, except as provided otherwise in R315-7-8.1.

20.2 GENERAL OPERATING REQUIREMENTS

(a) Hazardous waste shall not be placed in or on a land treatment facility unless the waste can be made less hazardous or non-hazardous by degradation, transformation, or immobilization processes occurring in or on the soil.

(b) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a 25-year storm.

(c) The owner or operator shall design, construct, operate, and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 25-year storm.

(d) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

20.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, before placing a hazardous waste in or on a land treatment facility, the owner or operator shall:

(a) Determine the concentration in the waste of any substances which equal or exceed the maximum concentrations contained in Table 1 of 40 CFR 261.24, that cause a waste to exhibit the Toxicity Characteristic;

(b) For any waste listed in R315-2, determine the concentration of any substances which caused the waste to be listed as a hazardous waste; and

(c) If food chain crops are grown, determine the concentrations in the waste of each of the following constituents: arsenic, cadmium, lead, and mercury, unless the owner or operator has written documented data that show that the constituent is not present;

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, specifies the substances for which a waste is listed as a hazardous waste. As required by R315-7-9.4, the waste analysis plan shall include analyses needed to comply with R315-7-20.8 and R315-7-20.9. As required by R315-7-12.4, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

20.4 FOOD CHAIN CROPS

(a) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, shall notify the Board. The growth of food chain crops at a facility which has never before been used for this purpose is a significant change in process under R315-3. Owners or operators of these land treatment facilities who propose to grow food chain crops shall comply with R315-3.

(b)(1) Food chain crops shall not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury, or other constituents identified under R315-7-20.3(b):

(i) Will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals, e.g., by grazing; or

(ii) Will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by R315-7-20.4(b)(1) shall be kept at the facility and shall, at a minimum:

(i) Be based on tests for the specific waste and application rates being used at the facility; and

(ii) Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods and statistical procedures.

(c) Food chain crops shall not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of R315-7-20.4(c)(1)(i) through (iii) or all requirements of R315-7-20.4(c)(2)(i) through (iv) are met.

(1)(i) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentration of 2. mg/kg, dry weight, or less.

(ii) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land use for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

TABLE

Time Period	Annual Cd Application Rate (kg/ha)
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(iii) The cumulative application of cadmium from waste does not exceed the levels in either paragraph (A) or (B) below:

(A)

TABLE

Soil cation exchange capacity (meq/100g)	MAXIMUM CUMULATIVE APPLICATION (kg/ha) Background soil pH less than 6.5	Background soil pH greater than 6.5
Less than 5	5	5
5-15	5	10
Greater than 15	5	20

(B) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: Provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

TABLE

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)
Less than 5	5
5 to 15	10
Greater than 15	20

(2)(i) The only food chain crop produced is animal feed.

(ii) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measure to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(iv) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops shall not be grown, except in compliance with R315-7-20.7(c)(2).

As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, if an owner or operator grows food chain crops on his land treatment facility, he shall place the information developed in this section in the operating record of the facility.

20.5 UNSATURATED ZONE, ZONE OF AERATION, MONITORING

(a) The owner or operator shall have in writing, and shall implement, an unsaturated zone monitoring plan which is designed to:

(1) Detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility; and

(2) Provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring shall be conducted before or in conjunction with the monitoring required under R315-7-20.5(a)(1).

(b) The unsaturated zone monitoring plan shall include, at a minimum:

(1) Soil monitoring using soil cores; and

(2) Soil-pore water monitoring using devices such as lysimeters.

(c) To comply with R315-7-20.5(a)(1), the owner or operator shall demonstrate in his unsaturated zone monitoring plan that:

(1) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

(2) The number of soil and soil-pore water samples to be taken is based on the variability of:

(i) The hazardous waste constituents, as identified in R315-7-20.3(a) and (b), in the waste and in the soil; and

(ii) The soil type(s); and

(3) The frequency and timing of soil and soil-pore water

sampling is based on the frequency, time, and rate of waste application, proximity to groundwater, and soil permeability.

(d) The owner or operator shall keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(e) The owner or operator shall analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under R315-7-20.3(a) and (b).

All data and information developed by the owner or operator under this section shall be placed in the operating record of the facility.

20.6 RECORDKEEPING

The owner or operator of a land treatment facility shall keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility, in the operating record required in R315-7-12.4, which incorporates by reference 40 CFR 265.73.

20.7 CLOSURE AND POST-CLOSURE CARE

(a) In the closure and post-closure plan under R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, the owner or operator shall address the following objectives and indicate how they will be achieved:

(1) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(2) Control of the release of contaminated run-off from the facility into surface water;

(3) Control of the release of airborne particulate contaminants caused by wind erosion; and

(4) Compliance with R315-7-20.4 concerning the growth of food-chain crops.

(b) The owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of R315-7-20.7(a):

(1) Type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration, e.g., proximity to groundwater, surface water and drinking water sources;

(4) Climate, including amount, frequency, and pH of precipitation;

(5) Geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) Unsaturated zone monitoring information obtained under R315-7-20.5; and

(7) Type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator shall consider at least the following methods in addressing the closure and post-closure care objectives of R315-7-20.7(a):

(1) Removal of contaminated soils;

(2) Placement of a final cover, considering:

(i) Functions of the cover, e.g., infiltration control, erosion and run-off control and wind erosion control; and

(ii) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

(3) Monitoring of groundwater.

(d) In addition to the requirements of R315-7-14 which incorporates by reference 40 CFR 265.110 - 265.120, during the closure period the owner or operator of a land treatment facility shall:

(1) Continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) Maintain the run-on control system required under R315-7-20.2(b);

(3) Maintain the run-off management system required under R315-7-20.2(c); and

(4) Control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, when closure is completed the owner or operator may submit to the Board, certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specification in the approved closure plan.

(f) In addition to the requirement of R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, during the post-closure care period the owner or operator of a land treatment unit shall:

(1) Continue soil-core monitoring by collecting and analyzing samples in a manner and frequency specified in the post-closure plan;

(2) Restrict access to the unit as appropriate for its post-closure use;

(3) Ensure that growth of food chain crops complies with R315-7-20.4; and

(4) Control wind dispersal of hazardous waste.

20.8 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and treatment zone meet all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(a) The waste is immediately incorporated into the soil so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f) and

(2) R315-7-9.8(b) is complied with; or

(b) That waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

20.9 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same land treatment area, unless R315-7-9.8(b) is complied with.

R315-7-21. Landfills.

21.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as R315-7-8.1 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this section.

21.2 DESIGN AND OPERATING REQUIREMENTS

(a) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with R315-8-14.2(d), (e), or (f). "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility".

(b) The owner or operator of each unit referred to in R315-7-21.2(a) shall notify the Executive Secretary at least 60 days prior to receiving waste. The owner or operator of each facility submitting notice shall file a part B application within six months of the receipt of the notice.

(c) The owner or operator of any replacement landfill unit is exempt from R315-7-21.2(a) if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(d) The double liner requirement set forth in R315-7-21.2(a) may be waived by the Board for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the waste does not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in R315-2-9(g), with EPA Hazardous Waste Number D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR 144.3; and

(C) The monofill is in compliance with applicable groundwater monitoring requirements for facilities with permits; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituents into groundwater or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of R315-7-21.2(a) and in good faith compliance with R315-7-21.2(a) and with guidance documents governing liners and leachate collection systems under R315-7-21.2(a), no liner or leachate collection system which is different from that which was so installed pursuant to R315-7-21.2(a) will be required for the unit by the Board when issuing the first permit to the facility, except that the Board will not be precluded from requiring installation of a new liner when the Board has reason to believe that any liner installed pursuant to the requirements of R315-7-21.10(a) is leaking.

(f) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(g) The owner or operator shall design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(h) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind shall cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

As required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the waste analysis plan shall include analysis needed to comply with R315-7-21.5 and R315-7-21.6. As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, the owner or operator shall place the results of these analyses in the operating record.

21.3 SURVEYING AND RECORDKEEPING

The owner or operator of a landfill shall maintain the following items in the operating record required in R315-7-12.4, which incorporates by reference 40 CFR 265.73:

(a) On a map, the exact location and dimension, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

21.4 CLOSURE AND POST-CLOSURE CARE

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator shall comply with all post-closure requirements contained in R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, including maintenance and monitoring throughout the post-closure care period. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events.

(2) Maintain and monitor the leak detection system in accordance with R315-8-14.2(c)(3)(iv) and (4) and R315-7-21.12(b), and comply with all other applicable leak detection system requirements of R315-7;

(3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of R315-7-13;

(4) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(5) Protect and maintain surveyed benchmarks used in complying with R315-7-21.3.

21.5 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Except as provided in R315-7-21.5(b) and in 7.21.9, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f).

(2) Section R315-7-9.8 is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in R315-13, which incorporates by reference 40 CFR 268 subpart D, ignitable wastes in containers may be landfilled without meeting the requirements of R315-7-21.5(a), provided that the wastes are disposed of in a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes shall be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; shall be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and shall not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

21.6 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed

in the same landfill cell, unless R315-7-9.8(b) is complied with.

21.7 SPECIAL REQUIREMENTS FOR BULK AND CONTAINERIZED LIQUIDS

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if;

(1) The landfill has a liner and leachate collection and removal system that meets the requirements of R315-8-14.2(a); or

(2) Before disposal, the liquid waste or waste containing free liquids is treated or stabilized chemically or physically, e.g., by mixing with a sorbent solid, so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited.

(c) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid

(i) has been removed by decanting, or other methods,

(ii) has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) had been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in R315-7-21.8 and is disposed of in accordance with R315-7-21.9.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095, Paint Filter Liquids Test as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." EPA Publication No. SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(e) The date of compliance with R315-7-21.7(a) is November 19, 1981. The date for compliance with R315-7-21.7(c) is March 22, 1982.

(f) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in R315-7-21.7(f)(1); materials that pass one of the tests in R315-7-21.7(f)(2); or materials that are determined by EPA to be nonbiodegradable through the R315-2-16, which incorporates by reference 40 CFR 260.22, petition process.

(1) Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon, e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon; or

(ii) High molecular weight synthetic polymers, e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polysobutylene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers. This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria.

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B, CO2 Evolution, Modified Sturm Test.

(g) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Board, or the Board determines that;

(1) The only reasonably available alternative to the placement in the landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain hazardous waste; and

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water, as that term is defined in 40 CFR 144.3.

21.8 SPECIAL REQUIREMENTS FOR CONTAINERS

Unless they are very small, such as an ampule, containers must be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

21.9 DISPOSAL OF SMALL CONTAINERS OF HAZARDOUS WASTE IN OVERPACKED DRUMS, LAB PACKS

Small containers of hazardous waste in overpacked drums, lab packs may be placed in a landfill if the following requirements are met:

(a) Hazardous waste shall be packaged in non-leaking inside containers. The inside containers shall be of a design and constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the waste held therein. Inside containers shall be tightly and securely sealed. The inside containers shall be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations, 49 CFR parts 173, 178, and 179, if those regulations specify particular inside container for the waste.

(b) The inside container shall be overpacked in an open head DOT specification metal shipping container, 49 CFR parts 178 and 179, of no more than 416-liter, 110 gallon, capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with R315-7-21.7(f), to completely sorb all of the liquid contents of the inside containers. The metal outer container shall be full after it has been packed with inside containers and sorbent material.

(c) The sorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers, in accordance with R315-7-9.8(b).

(d) Incompatible wastes, as defined in R315-1 shall not be placed in the same outside container.

(e) Reactive waste, other than cyanide or sulfide-bearing waste as defined in R315-2-9(f)(v) shall be treated or rendered non-reactive prior to packaging in accordance with R315-7-21.9(a) through (d). Cyanide and sulfide-bearing reactive waste may be packaged in accordance with R315-7-21.9(a) through (d) without first being treated or rendered non-reactive.

(f) Such disposal is in compliance with the requirements of R315-13, which incorporates by reference 40 CFR 268. Persons who incinerate lab packs according to the requirements in 40 CFR 268.42(c)(1) may use fiber drums in place of metal outer containers. The fiber drums must meet the DOT specifications in 49 CFR 173.12 and be overpacked according to the requirements in R315-7-21.9(b).

21.10 ACTION LEAKAGE RATE

(a) The owner or operator of landfill units subject to R315-7-21.2(a) shall submit a proposed action leakage rate to the Executive Secretary when submitting the notice required under R315-7-21.2(b). Within 60 days of receipt of the notification, the Executive Secretary will: Establish an action leakage rate, either as proposed by the owner or operator or modified using the criteria in this section; or extend the review period for up to 30 days. If no action is taken by the Executive Secretary before the original 60 or extended 90 day review periods, the action leakage rate will be approved as proposed by the owner or operator.

(b) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-7-21.2(a). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(c) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-7-21.12 to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under R315-7-21.12(b).

21.11 RESPONSE ACTIONS

(a) The owner or operator of landfill units subject to R315-7-21.2(a) shall submit a response action plan to the Executive Secretary when submitting the proposed action leakage rate under R315-7-21.10. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-7-21.11(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-7-21.11(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-7-21.11(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source,

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

21.12 MONITORING AND INSPECTION

(a) An owner or operator required to have a leak detection system under R315-7-21.2(a) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(b) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(c) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump. The timing for submission and approval of the proposed "pump operating level" will be in accordance with R315-7-21.10(a).

R315-7-22. Incinerators.

22.1 INCINERATORS APPLICABILITY

(a) R315-7-22 applies to owners or operators of facilities that incinerate hazardous waste, except as R315-7-8.1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-7-22.1(b)(2) and (3), the standards of R315-7 no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(b), documenting compliance with the requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE.

(2) The following requirements continue to apply even where the owner or operator has demonstrated compliance with the MACT requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE: R315-7-22.5 (closure) and the applicable requirements of R315-7-8 through R315-7-15 , R315-7-27, and R315-7-30.

(3) R315-7-22.2 generally prohibiting burning of hazardous waste during startup and shutdown remains in effect if you elect to comply with R315-3-9(b)(1)(i) to minimize emissions of toxic compounds from startup and shutdown.

(c) Owners and operators of incinerators burning hazardous waste are exempt from all of the requirements of R315-7-22, except R315-7-22.5, Closure, provided that the owner or operator has documented, in writing, that the waste

would not reasonably be expected to contain any of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, and the documentation is retained at the facility, if the waste to be burned is:

(1) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(2) Listed as a hazardous waste in R315-2-10 and R315-2-11, solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(b), and will not be burned when other hazardous wastes are present in the combustion zone; or

(3) A hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous wastes under R315-2-9, or

(4) A hazardous waste solely because it possesses the reactivity characteristics described by R315-2-9(f)(i), (ii), (iii), (vi), (vii), or (viii), and will not be burned when other hazardous wastes are present in the combustion zone.

22.2 GENERAL OPERATING REQUIREMENTS

During start-up and shut-down of an incinerator, the owner or operator shall not feed hazardous waste unless the incinerator is at steady state, normal, conditions of operation, including steady state operating temperature and air flow.

22.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the owner or operator shall sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state, normal, operating conditions, including waste and auxiliary fuel feed and air flow, and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, the owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

22.4 MONITORING AND INSPECTIONS

The owner or operator shall conduct, at a minimum, the following monitoring and inspections when incinerating hazardous waste:

(a) Existing instruments which relate to combustion and emission control shall be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions shall be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(b) The complete incinerator and associated equipment, pumps, valves, conveyors, pipes, etc., shall be inspected at least daily for leaks, spills and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

22.5 CLOSURE

At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues, including but not limited to ash, scrubber waters, and scrubber sludges from the incinerator. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

22.6 INTERIM STATUS INCINERATORS BURNING PARTICULAR HAZARDOUS WASTES

(a) Owners or operators of incinerators subject to R315-7-22 may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Board that they can meet the performance standards of R315-8-15 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify an incinerator:

(1) The owner of operator will submit an application to the Board containing applicable information in R315-3 demonstrating that the incinerator can meet the performance standards in R315-8-15 when they burn these wastes.

(2) The Board will issue a tentative decision as to whether the incinerator can meet the performance standards in R315-8-15. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the incinerator is located. The Board will accept comment on the tentative decision for 60 days. The Board also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Board will issue a decision whether or not to certify the incinerator.

R315-7-23. Thermal Treatment.

23.1 THERMAL TREATMENT

The rules in this section apply to owners or operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except as R315-7-8.1 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of R315-7-22 if the unit is an incinerator, and R315-14-7, which incorporates by reference 40 CFR 266, subpart H, if the unit is a boiler or an industrial furnace as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10.

23.2 GENERAL OPERATING REQUIREMENTS

Before adding hazardous waste, the owner or operator shall bring his thermal treatment process to steady state, normal, conditions of operation--including steady state operating temperature--using auxiliary fuel or other means, unless the process is a non-continuous, batch, thermal treatment process which requires a complete thermal cycle to treat a discrete quantity of hazardous waste.

23.3 WASTE ANALYSIS

In addition to the waste analyses required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the owner or operator shall sufficiently analyze any waste which he has not previously treated in his thermal treatment process to enable him to establish steady state, normal, or in other appropriate, for a non-continuous process, operating conditions, including waste and auxiliary fuel feed, and to determine the type of pollutants which might be emitted. At a minimum, the analysis shall determine:

(a) Heating value of the waste;

(b) Halogen content and sulfur content in the waste; and

(c) Concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present. The owner or operator shall place the results from each waste analysis, or the documented information, in the operating record of the facility.

23.4 MONITORING AND INSPECTIONS

The owner or operator shall conduct, at a minimum, the following monitoring and inspections when thermally treating hazardous waste:

(a) Existing instruments which relate to temperature and emission control, if an emission control device is present, shall

be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal treatment conditions shall be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

(b) The stack plume, emissions, where present, shall be observed visually at least hourly for normal appearance, color and opacity. The operator shall immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(c) The complete thermal treatment process and associated equipment, pumps, valves, conveyor, pipes, etc., shall be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms shall be checked to assure proper operation.

23.5 CLOSURE

At closure, the owner or operator shall remove all hazardous waste and hazardous waste residues, including, but not limited to, ash from thermal treatment process or equipment.

At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his thermal treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

23.6 OPEN BURNING; WASTE EXPLOSIVES

Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound, 0.33 kilometers/second at sea level. Owners or operators choosing to open burn or detonate waste explosives shall do so in accordance with the following table and in a manner that does not threaten human health or the environment:

TABLE

Pounds of Waste Explosives or Propellants	Minimum Distance from Open Burning or Detonation to the Property of Others
0 - 100	204 meters (670 feet)
101 - 1,000	380 meters (1,250 feet)
1,001 - 10,000	530 meters (1,730 feet)
10,001 - 30,000	690 meters (2,260 feet)

23.7 INTERIM STATUS THERMAL TREATMENT DEVICES BURNING PARTICULAR HAZARDOUS WASTE

(a) Owners or operators of thermal treatment devices subject to R315-23 may burn EPA Hazardous Wastes F020, F021, F022, F023, F026, or F027 if they receive a certification from the Board that they can meet the performance standards of R315-8-15 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

(1) The owner or operator will submit an application to the Board containing the applicable information in R315-3 demonstrating that the thermal treatment unit can meet the performance standard in R315-8-15 when they burn these wastes.

(2) The Board will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in R315-8-15. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment device is located. The Board will accept comment on the tentative decision for 60 days. The Board also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Board will issue a decision whether or not to certify the thermal treatment unit.

R315-7-24. Chemical, Physical, and Biological Treatment.

24.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities which treat hazardous wastes by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as R315-7-8.1 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments, and land treatment facilities shall be conducted in accordance with R315-7-17, which incorporates by reference 40 CFR 265.190 - 265.201, R315-7-18, and R315-7-20, respectively.

24.2 GENERAL OPERATING REQUIREMENTS

(a) Chemical, physical, or biological treatment of hazardous waste shall comply with R315-7-9.8(b).

(b) Hazardous wastes or treatment reagents shall not be placed in the treatment process or equipment if they could cause the treatment process to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(c) Where hazardous waste is continuously fed into a treatment process or equipment, the process or equipment shall be equipped with a means to stop this inflow, e.g., a waste feed cut-off system or bypass system to a standby containment device. These systems are intended to be used in the event of a malfunction in the treatment process or equipment.

24.3 WASTE ANALYSIS AND TRIAL TESTS

(a) In addition to the waste analysis required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, whenever:

(1) A hazardous waste which is substantially different from waste previously treated in a treatment process or equipment at the facility is to be treated in that process or equipment, or

(2) A substantially different process than any previously used at the facility is to be used to chemically treat hazardous waste;

The owner or operator shall, before treating the different waste or using the different process or equipment:

(i) Conduct waste analyses and trial treatment tests, e.g., bench scale or pilot plant scale tests; or

(ii) Obtain written, documented information on similar treatment of similar waste under similar operating conditions; to show that this proposed treatment will meet all applicable requirements of R315-7-24.2(a) and (b).

The owner or operator shall place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.

24.4 INSPECTIONS

The owner or operator of a treatment facility shall inspect, where present:

(a) Discharge control and safety equipment, e.g., waste feed cut-off systems, bypass systems, drainage systems, and pressure relief systems, at least once each operating day, to ensure that it is in good working order;

(b) Data gathered from monitoring equipment, e.g., pressure and temperature gauges, at least once each operating day, to ensure that the treatment process or equipment is being operated according to its design.

(c) The construction materials of the treatment process or equipment, at least weekly, to detect corrosion or leaking of fixtures or seams, and

(d) The construction materials of, and the area immediately surrounding, discharge confinement structures, e.g., dikes, at least weekly, to detect erosion or obvious signs of leakage, e.g., wet spots or dead vegetation.

24.5 CLOSURE

At closure, all hazardous waste and hazardous waste residues shall be removed from treatment processes or equipment, discharge control equipment, and discharge confinement structures. At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-1, that any solid waste removed from his treatment process or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

24.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Ignitable or reactive waste shall not be placed in a treatment process or equipment unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the treatment process or equipment so that;

(i) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f), and

(ii) R315-7-9.8(b) is complied with; or

(2) The waste is treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react.

24.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

(a) Incompatible wastes, or incompatible wastes and materials, see 40 CFR 265, Appendix V for examples, shall not be placed in the same treatment process or equipment, unless R315-7-9.8(b) is complied with.

(b) Hazardous waste shall not be placed in unwashed treatment equipment which previously held an incompatible waste or material, unless R315-7-9.8(b) is complied with.

R315-7-25. Underground Injection.

25.1 APPLICABILITY

Except as R315-7-8.1 provides otherwise:

(a) The owner or operator of a facility which disposes of hazardous waste by underground injection is excluded from the requirements of R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120 and R315-7-15, which incorporates by reference 40 CFR 265.140 - 265.150.

(b) The requirements of this section apply to owners and operators of wells used to dispose of hazardous waste which are classified as Class I under 40 CFR 144.6(a) and which are classified as Class IV under 40 CFR 144.6(d).

R315-7-26. Air Emission Standards for Process Vents.

The requirements of 40 CFR subpart AA sections 265.1030 through 265.1035, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator."

R315-7-27. Air Emission Standards for Equipment Leaks.

The requirements of 40 CFR subpart BB sections 265.1050 through 265.1064, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator."

R315-7-28. Drip Pads.

The requirements of 40 CFR subpart W sections 265.440 through 265.445, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

(2) Add, following December 6, 1990, in 40 CFR 264.570(a), "for all HSWA drip pads or January 31, 1992 for all non-HSWA drip pads."

(3) Add, following December 24, 1992, in 40 CFR 570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

R315-7-29. Containment Buildings.

The requirements of subpart DD sections 265.1100 through 265.1102, as found in 57 FR 37194, August 18, 1992, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

R315-7-30. Air Emission Standards for Tanks, Surface Impoundments, and Containers.

The requirements as found in 40 CFR subpart CC, sections 265.1080 through 265.1091, 1998 ed., as amended by as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-8-1. Purpose, Scope and Applicability.

(a) The purpose of R315-8 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in R315-8 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in R315-8 or R315-2.

(c) The requirements of R315-8 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under the Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by R315-3. R315-8 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(d) The requirements of R315-8 apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under R315-3.

(e) The requirements of R315-8 do not apply to:

(1) The owner or operator of a state approved facility managing municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-2-5, conditionally exempt small quantity generator exemption;

(2) A generator accumulating waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(3) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(4) The owner or operator of a totally enclosed treatment facility. A totally enclosed treatment facility is a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment;

(5) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(6)(i) Except as provided in R315-8-1(e)(6)(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste; and

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by R315-8 shall comply with all applicable requirements of R315-8-3 and R315-8-4.

(iii) Any person who is covered by R315-8-1(e)(6)(i), and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-8 and R315-3 for those activities.

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in R315-13, which incorporates by reference 40 CFR 268.40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in R315-8-2.8(b);

(8) The addition of absorbent material to waste in a container, as defined in R315-1, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with;

(9) The owner or operator of a facility managing recyclable materials described in R315-2-6, which incorporates by reference 40 CFR 261.6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR 266 subpart C, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, and R315-14-6, which incorporates by reference 40 CFR 266 subpart G; and

(10) Universal waste handlers and universal waste transporters (as defined in R315-16-1.9), handling the wastes listed below. These handlers are subject to regulation under R315-16, when handling the below listed universal wastes:

(i) Batteries as described in R315-16-1.2;

(ii) Pesticides as described in R315-16-1.3;

(iii) Mercury thermostats as described in R315-16-1.4; and

(iv) Mercury lamps as described in R315-16-1.5.

(f) The requirements of this rule apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in R315-13, which incorporates by reference 40 CFR 268.

(g) The requirements of R315-8-2 through 8-4 and R315-8-6.12 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, R315-8-2 through 8-4 and R315-8-6.12 do apply to the facility subject to the traditional hazardous waste permit). Instead of the requirements of R315-8-2 through 8-4, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Division of Solid and Hazardous Waste using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation waste to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store, or dispose of the waste according to R315-13, which incorporates by reference 40 CFR 268, and R315-8, and must be kept accurate and up to date;

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

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

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of R315-8;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the

remediation waste management site complies with the requirements of R315-8, and on how to respond effectively to emergencies;

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

(7) For remediation waste management sites subject to regulation under R315-8-9 through 8-15, and R315-8-16, which incorporates by reference 40 CFR 264.600 - 603, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of R315-8-2.9(b);

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

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with R315-8-11.2(c) and (d), R315-8-12.2(c) and (d), and R315-8-14.2(c) and (d) at the remediation waste management site, according to the requirements of R315-8-2.10;

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

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in R315-8-1(g)(2) through (g)(6) and R315-8-1(g)(9) through (g)(10); and

(13) Maintain records documenting compliance with R315-8-1(g)(1) through (g)(12).

1.1 RELATIONSHIP TO INTERIM STATUS STANDARDS

A facility owner or operator who has fully complied with the requirements for interim status--as defined in section 3005(e) of the Federal RCRA Act and regulations under R315-3-7.1 shall comply with the regulations specified in R315-7 in lieu of R315-8, until final administrative disposition of his permit application is made, except as provided under R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553.

R315-8-2. General Facility Standards.

2.1 APPLICABILITY

(a) The rules in this section apply to the owners or operators of all hazardous waste management facilities, except as provided otherwise in R315-8-1(e).

(b) R315-8-2.9(b) applies only to facilities subject to regulation under R315-8-9 through R315-8-15 and R315-8-16, which incorporates by reference 40 CFR 264.600 - 264.603.

2.2 IDENTIFICATION NUMBER

Every facility owner or operator shall obtain an EPA identification number by applying to the Executive Secretary using EPA form 8700-12. Information on obtaining this number can be acquired by contacting the Utah Division of Solid and Hazardous Waste.

2.3 REQUIRED NOTICES

(a)(1) An owner or operator of a facility that has arranged to receive hazardous waste from a foreign source shall notify the Board in writing at least four weeks in advance of the expected date of arrival of these shipments at the facility. A notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to R315-5-8, which incorporates by reference 40 CFR 262, subpart H, shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document shall be maintained at the facility for at least three years.

(b) An owner or operator of a facility that receives hazardous waste from off-site, except when the owner or operator is also the generator, shall inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. A copy of this written notice shall be retained by the owner or operator as part of the operating record of waste received.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of R315-8 and R315-3. An owner's or operator's failure to notify the new owner or operator of the requirements of R315-8 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

2.4 GENERAL WASTE ANALYSIS

The requirements as found in 40 CFR 264.13, 1996 ed., are adopted and incorporated by reference.

2.5 SECURITY

(a) A facility owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the Board that:

(1) Physical contact with the waste structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of R315-8-2.5.

An owner or operator who wishes to make the demonstration referred to above shall do so with the part B permit application.

(b) Unless the owner or operator has made a successful demonstration under R315-8-2.5(a)(1) and (a)(2), a facility shall have:

(1) A 24-hour surveillance system, e.g., television monitoring or surveillance by guards or facility personnel,

which continuously monitors and controls entry onto the active portion of the facility; or

(2)(i) An artificial or natural barrier, e.g., a fence in good repair or a fence combined with a cliff, which completely surrounds the active portion of the facility; and

(ii) A means to control entry at all times, through gates or other entrances to the active portion of the facility, e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility. The requirements of R315-8-2.5(b) are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of R315-8-2.5(b)(1) or (2).

(c) Unless the owner or operator has made a successful demonstration under R315-8-2.5(a)(1) and (a)(2), a sign with the legend, "Danger - Unauthorized Personnel Keep Out", shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion is potentially dangerous. Owners or operators are encouraged to also describe in the sign the type of hazard, e.g., hazardous waste, flammable wastes, etc. contained within the active portion of the facility. See R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for discussion of security requirements during the post-closure care period.

2.6 GENERAL INSPECTION REQUIREMENTS

(a) Facility owners or operators shall inspect their facilities for malfunctions and deterioration, operator errors, and discharges, which may be causing or may lead to release of hazardous waste constituents to the environment or pose a threat to human health. These inspections shall be conducted frequently enough to identify problems in time to take corrective action before they harm human health or the environment.

(b)(1) Facility owners or operators shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment, such as dikes and sump pumps, that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The schedule shall be kept at the facility.

(3) The schedule shall identify the types of problems, e.g., malfunctions or deterioration, which are to be looked for during the inspection, for example, inoperative sump pump, leaking fitting, eroding dike, etc.

(4) The frequency of the inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when they are in use. At a minimum, the inspection schedule shall include the items and frequencies called for in R315-8-9.5, R315-8-10, which incorporates by reference 40 CFR 264.190 - 264.199, R315-8-11.3, R315-8-12.3, R315-8-13.6, R315-8-14.3, R315-8-15.7, R315-8-16, which incorporates by reference 40 CFR 264.600 - 264.603, R315-8-17, which incorporates by reference 40 CFR 264.1030 - 264.1036, R315-8-18, which incorporates by reference 40 CFR 264.1050 - 264.1065, and R315-8-22, which incorporates by reference 40 CFR 264.1083 through 264.1089.

(c) The owner or operator shall make any repairs, or take other remedial action, on a time schedule which ensures that any deterioration or malfunction discovered does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall keep records of inspections in an inspection log or summary. These records shall be retained for at least three years. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs made or remedial actions taken.

2.7 PERSONNEL TRAINING

(a)(1) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section and that includes all the elements described in the document required under R315-8-2.7(d)(3).

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation relevant to the position in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, but not necessarily limited to, the following, where applicable:

(i) Procedures for inspection, use, repair, and replacement of facility emergency and monitoring equipment;

(ii) Communications or alarm systems;

(iii) Key parameters for automatic waste feed cut-off systems;

(iv) Response to fires or explosions;

(v) Response to groundwater contamination incidents; and

(vi) Shutdown of operations.

(b) Facility personnel shall successfully complete the program required in R315-8-2.7(a) within six months after the effective date of these rules or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these rules shall not work in unsupervised positions until they have completed the training requirements of R315-8-2.7(a).

(c) Facility personnel shall take part in an annual review of their initial training in both contingency procedures and the hazardous waste management procedures relevant to the positions in which they are employed.

(d) Owners or operators of facilities shall maintain the following documents and records and make them available upon request:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under R315-8-2.7(d)(1). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under R315-8-2.7(d)(1);

(4) Records that document that the training or job experience required under R315-8-2.7(a), (b), and (c) has been given to, and completed by, facility personnel.

(e) Training records on current employees shall be maintained until closure of the facility; training records on former employees shall be retained for at least three years from the date the employee last worked at the facility. Employee training records may accompany personnel transferred within the same company.

2.8 GENERAL REQUIREMENTS FOR IGNITABLE, REACTIVE, OR INCOMPATIBLE WASTES

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes. These waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks, static, electrical, or mechanical, spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of R315-8, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, shall take precautions to prevent reactions which:

(1) Generate extreme heat or pressure, fire or explosion, or violent reactions;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) Damage the structural integrity of the device or facility;

(5) Through other like means threaten human health or the environment.

(c) When required to comply with R315-8-2.8, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, date from trial tests, e.g., bench scale or pilot scale tests, waste analyses as specified in R315-8-2.4, which incorporates by reference 40 CFR 264.13, or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

2.9 LOCATION STANDARDS

(a) Seismic considerations.

(1) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted shall not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time. For definition of terms used in this section see R315-1. Procedures for demonstrating compliance with this standard in part B of the permit application are specified in R315-3 specifically in R315-3-2.5. Facilities which are located in political jurisdictions other than those listed in R315-50-11 are assumed to be in compliance with this requirement.

(b) Floodplains.

(1) A facility located in a 100-year floodplain shall be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can demonstrate to the Executive Secretary's satisfaction that:

(i) Procedures are in effect which will cause the waste to be removed safely, before flood waters can reach the facility, to a location where the wastes will not be vulnerable to flood waters; or

(ii) For existing surface impoundments, waste piles, land treatment units, landfills, and miscellaneous units, no adverse effects on human health or the environment will result if washout occurs, considering:

(A) The volume and physical and chemical characteristics of the waste in the facility;

(B) The concentration of hazardous constituents that would potentially affect surface waters as a result of washout;

(C) The impact of such concentrations on the current or potential uses of and water quality standards established for the affected surface waters; and

(D) The impact of hazardous constituents on the sediments of affected surface waters or the soils of the 100-year floodplain that could result from washout. The location where wastes are moved shall be a facility which is either permitted by EPA or has a permit in accordance with R315-3.

(2) As used in R315-8-2.9(b)(1):

(i) "100-year floodplain" means any land area which is subject to a one percent or greater chance of flooding in any given year from any source;

(ii) "Washout" means the movement of hazardous waste from the active portion of the facility as a result of flooding;

(iii) "100-year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.

(c) Salt dome formations, salt bed formations, underground mines and caves.

The placement of any non-containerized or bulk liquid hazardous wastes in any salt dome formation, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

2.10 CONSTRUCTION QUALITY ASSURANCE PROGRAM

(a) CQA program. (1) A construction quality assurance (CQA) program is required for all surface impoundment, waste pile, and landfill units that are required to comply with R315-8-11.2(c) and (d), R315-8-12.2(c) and (d), and R315-8-14.2(c) and (d). The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a registered professional engineer.

(2) The CQA program shall address the following physical components, where applicable:

(i) Foundations;

(ii) Dikes;

(iii) Low-permeability soil liners;

(iv) Geomembranes, flexible membrane liners;

(v) Leachate collection and removal systems and leak detection systems; and

(vi) Final cover systems.

(b) Written CQA plan. The owner or operator of units subject to the CQA program under R315-8-2.10(a) shall develop and implement a written CQA plan. The plan must identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

(1) Identification of applicable units, and a description of how they will be constructed.

(2) Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications.

(3) A description of inspection and sampling activities for all unit components identified in R315-8-2.10(a)(2), including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover: Sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials; plans for implementing corrective measures; and data or other information to be recorded and retained in the operating record under R315-8-5.3.

(c) Contents of program. (1) The CQA program shall include observations, inspections, tests, and measurements sufficient to ensure:

(i) Structural stability and integrity of all components of the unit identified in R315-8-2.10(a)(2);

(ii) Proper construction of all components of the liners, leachate collection and removal system, leak detection system, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components, e.g., pipes, according to design specifications;

(iii) Conformity of all materials used with design and other material specifications under R315-8-11.2, R315-8-12.2, and R315-8-14.2.

(2) The CQA program shall include test fills for compacted soil liners, using the same compaction methods as in the full scale unit, to ensure that the liners are constructed to meet the hydraulic conductivity requirements of R315-8-11.2(c)(1)(i)(B), R315-8-12.2(c)(1)(i)(B), and R315-8-14.2(c)(1)(i)(B) in the field. Compliance with the hydraulic conductivity requirements shall be verified by using in-situ testing on the constructed test fill. The Executive Secretary may accept an alternative demonstration, in lieu of a test fill, where data are sufficient to show that a constructed soil liner will meet the hydraulic conductivity requirements of R315-8-11.2(c)(1)(i)(B), R315-8-12.2(c)(1)(i)(B), and R315-8-14.2(c)(1)(i)(B) in the field.

(d) Certification. Waste shall not be received in a unit subject to R315-8-2.10 until the owner or operator has submitted to the Executive Secretary by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of R315-8-11.2(c) or (d), R315-8-12.2(c) or (d), or R315-8-14.2(c) or (d); and the procedure in R315-3-3.1(l)(2)(ii) has been completed. Documentation supporting the CQA officer's certification shall be furnished to the Executive Secretary upon request.

R315-8-3. Preparedness and Prevention.

3.1 APPLICABILITY

The regulations in this section apply to the owners or operators of all hazardous waste management facilities, except as provided otherwise in R315-8-1.

3.2 DESIGN AND OPERATION OF FACILITY

Facilities shall be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, groundwater, or surface water which could threaten the environment or human health.

3.3 REQUIRED EQUIPMENT

All facilities shall be equipped with the following, unless it can be demonstrated to the Board that there are no hazards at the facility which could require a particular kind of equipment specified below:

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

(b) A device capable of summoning external emergency assistance from local law enforcement agencies, fire departments, or State or local emergency response teams, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio;

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

(d) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems. This demonstration shall be made with the part B permit application.

3.4 TESTING AND MAINTENANCE OF EQUIPMENT

All facility communications or alarm systems, fire protection equipment, safety equipment, discharge control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

3.5 ACCESS TO COMMUNICATIONS OR ALARM SYSTEM

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all employees involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless the Board has ruled that this type of a device is not required under R315-8-3.3.

(b) If there is just one employee on the premises while the facility is operating, he shall have immediate access to a device capable of summoning external emergency assistance, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, unless the Board has ruled that this type of a device is not required under R315-8-3.3.

3.6 REQUIRED AISLE SPACE

The facility owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, discharge control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Board that aisle space is not needed for any of these purposes. This demonstration shall be made with the part B permit application.

3.7 ARRANGEMENTS WITH LOCAL AUTHORITIES

(a) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

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

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

(3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

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

(b) Where State or local authorities decline to enter into these arrangements, the owner or operator shall document the refusal in the operating record.

R315-8-4. Contingency Plan and Emergency Procedures.

4.1 APPLICABILITY

The regulations in this section apply to the owners and operators of all hazardous waste management facilities, except as provided otherwise in R315-8-1(e).

4.2 PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN

(a) Each owner or operator shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents

to air, soil, groundwater, or surface water.

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

4.3 CONTENT OF CONTINGENCY PLAN

(a) The plan shall describe the actions facility personnel shall take to comply with R315-8-4.2 and R315-8-4.7 in response to fires, explosions or any unplanned sudden or non-sudden discharge of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility. If a facility owner or operator already has prepared a Spill Prevention, Control and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions sufficient to comply with the requirements of this section.

(b) The plan shall describe arrangements agreed to by local law enforcement agencies, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to R315-8-3.7.

(c) The plan shall list names, addresses and phone numbers, office and home, of all persons qualified to act as facility emergency coordinator, see R315-8-4.6, and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they assume responsibility as alternates. For new facilities, this information shall be supplied to the Board before operations begin rather than at the time of submission of the plan.

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

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

4.4 COPIES OF A CONTINGENCY PLAN

A copy of the contingency plan and all revisions to the plan shall be:

(a) Maintained at the facility;

(b) Made available upon request; and

(c) Submitted to all local law enforcement agencies, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

The contingency plan shall be submitted to the Board with part B of the permit application under R315-3 and after modification or approval will become a condition of any permit issued.

4.5 AMENDMENT OF CONTINGENCY PLAN

The contingency plan shall be reviewed, and immediately amended, if necessary, under any of the following circumstances:

(a) Revisions to the facility permit;

(b) Failure of the plan in an emergency;

(c) Changes in the facility design, construction, operation, maintenance, or other circumstances that materially increase the potential for fires, explosions, or discharges of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) Changes in the list of emergency coordinators; or

(e) Changes in the list of emergency equipment.

4.6 EMERGENCY COORDINATOR

At all times there shall be at least one employee either present on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short time period, with the responsibility for coordinating all emergency response measures. This facility emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of manifests and all other records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in R315-8-4.7. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of waste(s) handled by the facility, and type and complexity of the facility.

4.7 EMERGENCY PROCEDURES

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

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

(2) Notify appropriate State or local agencies with designated response roles whenever their assistance is needed.

(b) In the event of a discharge, fire, or explosion, the facility's emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any discharged materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

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

(d) The facility's emergency coordinator shall immediately report his assessment that the facility has had a discharge, fire, or explosion which could threaten human health, or the environment, outside the facility, as follows:

(1) If his assessment indicates that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to assist appropriate officials in making the decision whether local areas should be evacuated; and

(2) He shall immediately notify both the Utah State Department of Environmental Quality as specified in R315-9 and the government official designated as the on-scene coordinator for that geographical area, in the applicable regional contingency plan, or the National Response Center (800/424-8802). The report shall include:

(i) Name and telephone number of reporter;

(ii) Name and address of facility;

(iii) Time and type of incident, e.g., discharge, fire;

(iv) Name and quantity of material(s) involved, to the extent available;

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

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

(e) During an emergency, the facility's emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and discharges do not occur, recur, or spread to other hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing discharged waste, and

removing or isolating containers.

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

(g) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a discharge, fire, or explosion at the facility. The recovered material shall be handled and managed as a hazardous waste unless it is analyzed and determined not to be, using the procedures specified in R315-2.

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

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

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

(i) The facility owner or operator shall notify the Executive Secretary and other appropriate State and local authorities, that the facility is in compliance with R315-8-4.7(h) before operations are resumed in the affected area(s) of the facility.

(j) The facility owner or operator shall record in the operating record the time, date, and nature of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the emergency to the Executive Secretary. The report shall include:

(1) Name, address, and telephone number of the owner or operator;

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

(3) Date, time, and type of incident, e.g., fire, discharge;

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

(5) The extent of injuries, if any;

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

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

R315-8-5. Manifest System, Recordkeeping, and Reporting.

5.1 APPLICABILITY

The rules in this section apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-8-1. R315-8-5.2, R315-8-5.4, and R315-8-5.7 do not apply to owners and operators of on-site facilities that do not receive hazardous waste from off-site sources.

R315-8-5.3, incorporates by reference 40 CFR 264.73, July 1, 1992. However, 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where the wastes were generated.

5.2 USE OF MANIFEST SYSTEM

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest, as defined in R315-8-5.4(c), on each copy of the manifest;

Comment: The Agency does not intend that the owner or operator of a facility whose procedures under R315-8-2.4, which incorporates by reference 40 CFR 264.13(c), include waste analysis shall perform that analysis before signing the manifest and giving it to the transporter. R315-8-5.4(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;

(2) Note any significant discrepancies, as defined in R315-8-5.4(a), in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

Comment: The Agency does not intend that the owner or operator of a facility whose procedures under R315-8-2.4, which incorporates by reference 40 CFR 264.13(c), include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. R315-8-5.4(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, shall send a copy of the shipping paper signed and dated to the generator; and

Comment: R315-5-2.23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility shall comply with the requirements of R315-5.

Comment: The provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of R315-5-3.34, which incorporates by reference 40 CFR 262.34, only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

(d) Within three working days of the receipt of a shipment subject to R315 -5-8, which incorporates by reference 40 CFR 262, subpart H, the owner or operator of the facility shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document shall be maintained at the facility for at least three years from the date of signature.

5.3 OPERATING RECORD

The requirements as found in 40 CFR 264.73, 2000 ed., are adopted and incorporated by reference.

5.4 MANIFEST DISCREPANCIES

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are: (1) for batch waste, any variation in piece count,

such as a discrepancy of one drum in a truckload, and (2) for bulk waste, variations greater than 10 percent in weight. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, e.g., with telephone conversations. If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Executive Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The Executive Secretary does not intend that the owner or operator of a facility whose procedures under R315-8-2.4 which incorporates by reference 40 CFR 264.13, include waste analysis shall perform that analysis before signing the manifest and giving it to the transporter. However, unreconciled discrepancies discovered during later analysis shall be reported.

5.5 AVAILABILITY, RETENTION, AND DISPOSITION OF RECORDS

(a) Records of waste disposal locations and quantities required to be maintained under R315-8-5.3, which incorporates by reference 40 CFR 264.73(b)(2) shall be submitted to the Board and local land authority upon closure of the facility.

(b) The retention period for all records required under this section is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Executive Secretary.

(c) All records, including plans, required under R315-8 shall be furnished upon request, and made available at all reasonable times for inspection.

5.6 BIENNIAL REPORT

Owners or operators of facilities that treat, store, or dispose of hazardous waste shall prepare and submit a single copy of an biennial report to the Board by March 1 of each even numbered year. The biennial report shall be submitted on EPA form 8700-13B. The biennial report shall cover facility activities during the previous calendar year and shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which a hazardous waste was received during the year; for imported shipments, the name and address of the foreign generator shall be given in the report;

(d) A description and the quantity of each hazardous waste received by the facility during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(e) The method(s) of treatment, storage, or disposal for each hazardous waste; and

(f) The most recent closure cost estimate under R315-8-8, which incorporates by reference 40 CFR 264. 140 - 264.151, and for disposal facilities, the most recent post-closure cost estimate under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151; and

(g) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent the information is available for the years prior to 1984;

(i) The certification signed by the owner or operator of the facility or his authorized representative.

5.7 UNMANIFESTED WASTE REPORT

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest as described in R315-6-2.20(e)(2), except for shipments that do not require a manifest because of the exclusions in R315-2, the owner or operator shall prepare and submit a single copy of a report to the Board within 15 days of the receipt of the waste. The report shall include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The date of receipt of the waste;

(c) The word "unmanifested" under the comments section, or check appropriate box of the report form;

(d) The EPA identification number, name, and address of the generator and the transporter, if available;

(e) A description and the quantity of each unmanifested hazardous waste received by the facility;

(f) The method(s) of treatment, storage, or disposal for each hazardous waste;

(g) A certification signed by the owner or operator of the facility or his authorized representative; and

(h) A brief explanation of why the shipment was unmanifested, in the comments section of the report form. If a facility owner or operator accepts unmanifested hazardous waste, believing it to be excluded under R315-2, he should obtain from the generator a certification that the waste qualifies for exclusion, otherwise he should file an unmanifested waste report for the hazardous waste movement.

5.8 ADDITIONAL REPORTS

In addition to the biennial and unmanifested waste reporting requirements described in R315-8-5.6 and R315-8, a facility owner operator shall also report the following to the Board:

(a) Discharges, fires, and explosions as specified in R315-8-4.7(j);

(b) Upon its request, all information as the Board may deem necessary to determine compliance with the requirements of R315-8;

(c) Facility closure as specified in R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120; and

(d) As otherwise required in R315-8-6, R315-8-11, R315-8-12, R315-8-13, R315-8-14, R315-8-17, which incorporates by reference 40 CFR 264-1030 - 264.1036, R315-8-18, which incorporates by reference 40 CFR 264.1050 - 264.1065, and R315-8-22, which incorporates by reference 40 CFR 264.1080 - 264.1090.

R315-8-6. Groundwater Protection.

6.1 APPLICABILITY

(a)(1) Except as provided in R315-8-6.1(b), R315-8-6 applies to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator shall satisfy the requirements identified in R315-8-6.1(a)(2) for all wastes, or constituents thereof, contained in solid waste management units at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units shall comply with the requirements in R315-8-6.12. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982, hereinafter referred to as a "regulated unit", shall comply with the requirements of R315-8-6.2 through R315-8-6.11 in lieu of R315-8-6.12 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of R315-8-6.12 apply to regulated units.

(3) Groundwater monitoring shall be required at non-land disposal facilities as determined to be necessary and appropriate by the Executive Secretary.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under R315-8-6 if:

(1) The owner or operator is exempted under R315-8-1(e) or

(2) He operates a unit which the Board finds:

(i) Is an engineered structure.

(ii) Does not receive or contain liquid waste or waste containing free liquid.

(iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off.

(iv) Has both inner and outer layers of containment enclosing the waste.

(v) Has a leak detection system built into each containment layer.

(vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods, and

(vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the post-closure care period.

(3) The Board finds pursuant to R315-8-13.11(d) that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of R315-8-13.9 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(4) The Board finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit, including the closure period and the post-closure care period specified under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. This demonstration shall be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a waste pile in compliance with R315-8-12.1(c).

(c) The regulations under this section apply during the active life of the regulated unit, including the closure period. After closure of the regulated unit, the regulations in this section:

(1) Do not apply if the waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264-120, if the owner or operator is conducting a detection monitoring program under R315-8-6.9;

(3) Apply during the compliance period under R315-8-6.7 the owner is conducting a compliance monitoring program under R315-8-6.10 or a corrective action program under R315-8-6.11.

(d) Requirements in this section may apply to miscellaneous units when necessary to comply with R315-8-24, which incorporates by reference 40 CFR 264.601 - 264.603.

(e) The regulations of R315-8-6 apply to all owners and operators subject to the requirements of R315-3-1.1(e)(7), when the Executive Secretary issues either a post-closure permit or an enforceable document, as defined in R315-3-1.1(e)(7), at the facility. When the Executive Secretary issues an enforceable document, references in R315-8-6 to "in the permit" mean "in the enforceable document."

(f) The Executive Secretary may replace all or part of the requirements of R315-8-6.2 through R315-8-6.11 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the permit, or in an enforceable document, as defined in R315-3-1.1(e)(7) where the Executive Secretary determines that:

(1) The regulated unit is situated among solid waste management units, or areas of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s), or areas of concern, are likely to have contributed to the release; and

(2) It is not necessary to apply the groundwater monitoring and corrective action requirements of R315-8-6.2 through R315-8-6.11 because alternative requirements will protect human health and the environment.

6.2 REQUIRED PROGRAMS

(a) Owners and operators subject to this section shall conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under R315-8-6.4, from a regulated unit are detected at the compliance point under R315-8-6.6, the owner or operator shall institute a compliance monitoring program under R315-8-6.10. Detected is defined as statistically significant evidence of contamination as described in R315-8-6.9(f);

(2) Whenever the groundwater protection standard under R315-8-6.3, is exceeded, the owner or operator shall institute a corrective action program under R315-8-6.11. "Exceeded" is defined as statistically significant evidence of increased contamination as described in R315-8-6.10(d);

(3) Whenever hazardous constituents under R315-8-6.4, from a regulated unit exceed concentration limits under R315-8-6.5 in groundwater between the compliance point under R315-8-6.6 and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under R315-8-6.11; or

(4) In all other cases, the owner or operator shall institute a detection monitoring program under R315-8-6.9.

(b) The Executive Secretary will specify in the facility permit the specific elements of the monitoring and response program. The Executive Secretary may include one or more of the programs identified in R315-8-6.2(a) in the facility permit as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. In deciding whether to require the owner or operator to be prepared to institute a particular program, the Executive Secretary will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate this type of a program could be taken.

6.3 GROUNDWATER PROTECTION STANDARD

The owner or operator shall comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under R315-8-6.4 that are detected in the groundwater from a regulated unit do not exceed the concentration limits under R315-8-6.5 in the uppermost aquifer underlaying the waste management area beyond the point of compliance under R315-8-6.6 during the compliance period under R315-8-6.7. The Executive Secretary will establish this groundwater protection standard in the facility permit when hazardous constituents have been detected in the groundwater.

6.4 HAZARDOUS CONSTITUENTS

(a) The Executive Secretary will specify in the facility permit the hazardous constituents to which the groundwater

protection standard of R315-8-6.3 applies. Hazardous constituents are constituents identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, that have been detected in groundwater in the uppermost aquifer underlaying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Executive Secretary has excluded them under paragraph 8.6.4(b).

(b) The Executive Secretary will exclude an R315-50-10 constituent from the list of hazardous constituents specified in the facility permit if he finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the Executive Secretary will consider the following:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically-connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.4(b) about the use of groundwater in the area around the facility, the Executive Secretary will consider any identification of underground sources of drinking water.

6.5 CONCENTRATION LIMITS

(a) The Executive Secretary will specify in the facility permit concentration limits in the groundwater for hazardous constituents established under R315-8-6.4. The concentration of a hazardous constituent:

(1) Shall not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

(2) For any of the constituents listed in Table 1, shall not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table 1; or

TABLE 1
Maximum Concentration of Constituents for Groundwater Protection

CONSTITUENT		MAXIMUM CONCENTRATION(1)
Arsenic		0.05
Barium		1.0
Cadmium		0.01
Chromium		0.05
Lead		0.05
Mercury		0.002
Selenium		0.01
Silver		0.05
Endrin	(1,2,3,4,10,10-hexachloro-1, 7-epoxy-1,4,4a,5,6,7,8, 9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane	(1,2,3,4,5,6,-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor	(1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene	(C10H10C18, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D	(2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex	(2,4,5-Trichlorophenoxypropionic acid)	0.01

(1)Milligrams per liter

(3) Shall not exceed an alternate limit established by the Executive Secretary under R315-8-6.5(b).

(b) The Executive Secretary will establish an alternate concentration limit for a hazardous constituent if they find that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the Executive Secretary will consider the following factors:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste

constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater, and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.5(b) about the use of groundwater in the area around the facility the Board will consider any identification of underground sources of drinking water.

6.6 POINT OF COMPLIANCE

(a) The Executive Secretary will specify in the facility permit the point of compliance at which the groundwater protection standard of R315-8-6.3 applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlaying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

6.7 COMPLIANCE PERIOD

(a) The Executive Secretary will specify in the facility permit the compliance period during which the groundwater protection standard of R315-8-6.3 applies. The compliance period is the number of years equal to the active life of the waste management area, including any waste management activity prior to permit and the closure period.

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of R315-8-6.9.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in R315-8-6.7(a), the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

6.8 GENERAL GROUNDWATER MONITORING REQUIREMENTS

The owner or operator shall comply with the following requirements for any groundwater monitoring program developed to satisfy R315-8-6.9, R315-8-6.10, or R315-8-6.11:

(a) The groundwater monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(1) Represent the quality of background water that has not been affected by leakage from a regulated unit;

(i) A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(A) hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(B) Sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;

(2) represent the quality of groundwater passing the point of compliance; and

(3) allow for the detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(b) If a facility contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(c) All monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space, i.e., the space between the bore hole and well casing, above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(d) The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(e) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(f) The groundwater monitoring program shall include a determination of the groundwater surface elevation each time groundwater is sampled.

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point. The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed, following generally accepted statistical principles. The sample size should be as large as necessary to ensure with reasonable confidence that a contaminant release to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit which shall be specified in the unit permit upon approval by the Executive Secretary. This sampling procedure should be:

(1) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of

the potential contaminants; or

(2) an alternate sampling procedure proposed by the owner or operator and approved by the Executive Secretary.

(h) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent, upon approval by the Executive Secretary, will be specified in the unit permit. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits, pql's, are used in any of the following statistical procedures to comply with R315-8-6.8(i)(5), the pql shall be proposed by the owner or operator and approved by the Executive Secretary. Use of any of the following statistical methods shall be protective of human health and the environment and shall comply with the performance standards outlined in R315-8-6.8(i).

(1) a parametric analysis of variance, ANOVA, followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(2) an analysis of variance, ANOVA, based on ranks followed by multiple comparisons procedures to identify statistical significant evidence of contamination. The method shall include estimation and testing of the contrasts between compliance well's median and the background median levels for each constituent;

(3) 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;

(4) a control chart approach that gives control limits for each constituent;

(5) another statistical test method submitted by the owner or operator and approved by the Executive Secretary.

(i) Any statistical method chosen under R315-8-6.8(h) for specification in the unit permit shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, predictions intervals or control charts.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the Executive Secretary if he finds it to be protective of human health and the environment.

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be proposed by the owner or operator and approved by the Executive Secretary if he finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantification limit, pql, approved by the Executive Secretary under R315-8-6.8(h) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(j) Groundwater monitoring data collected in accordance with R315-8-6.8(g) including actual levels of constituents shall be maintained in the facility operating record. The Executive Secretary will specify in the permit when the data shall be submitted for review.

6.9 DETECTION MONITORING PROGRAM

An owner or operator required to establish a detection monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor for indicator parameters, e.g., specific conductance, pH, total organic carbon, or total organic halogen, waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The Executive Secretary will specify the parameters or constituents to be monitored in the facility permit after considering the following factors:

(1) The types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(2) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(3) The detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b), and (c).

(c) The owner or operator shall conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to R315-8-6.9(a) in accordance with R315-8-6.9(g). The owner or operator shall maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under R315-8-6.8(h).

(d) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under R315-8-6.9(a) in accordance with R315-8-6.8(g). A sequence of at least four samples from each well, background and compliance wells, shall be collected at least semiannually during detection monitoring.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The owner or operator shall determine whether there is statistically significant evidence of contamination for any

chemical parameter of hazardous constituent specified in the permit pursuant to R315-8-6.9(a) at a frequency specified under R315-8-6.9(d).

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator shall use the method specified in the permit under R315-8-6.8(h). This method shall compare data collected at the compliance point to the background groundwater quality data.

(2) The owner or operator shall determine whether there is statistically significant evidence of contamination at each monitoring well as the compliance point within a reasonable period of time after completion of sampling. The Executive Secretary will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(g) If the owner or operator determines pursuant to R315-8-6.9(f) that there is statistically significant evidence of contamination for chemical parameters of hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he shall:

(1) notify the Executive Secretary of this finding in writing within seven days. The notification shall indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(2) immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, are present, and if so, in what concentration;

(3) for any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, compounds found in the analysis pursuant to R315-8-6.9(g)(2), the owner or operator may resample within one month and repeat the analysis for these compounds detected. If the results for the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to R315-8-6.9(g)(2), the hazardous constituents found during this initial R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis will form the basis for compliance monitoring;

(4) within 90 days, submit to the Executive Secretary an application for a permit modification to establish a compliance monitoring program meeting the requirements of R315-8-6.10. The application shall include the following information;

(i) an identification of the concentration of any R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituent detected in the groundwater at each monitoring well at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of R315-8-6.10;

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of R315-8-6.10;

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under R315-8-6.10(a)(1) or (2), or a notice of intent to seek an alternate concentration limit under R315-8-6.5(b); and

(5) within 180 days, submit to the Executive Secretary:

(i) all data necessary to justify an alternate concentration limit sought under R315-8-6.5(b); and

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirement of R315-8-6.11, unless:

(A) all hazardous constituents identified under R315-8-6.9(g)(2) are listed in R315-8-6.5, Table 1 and their concentrations do not exceed their respective values given in that table; or

(B) the owner or operator has sought an alternate concentration limit under R315-8-6.5(b) for every hazardous constituent identified under R315-8-6.9(g)(2).

(6) If the owner or operator determines, pursuant to R315-8-6.9(f), that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to R315-8-6.9(a) at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner or operator may make a demonstration under R315-8-6.9(g)(6) in addition to, or in lieu of, submitting a permit modification application under R315-8-6.9(g)(4); however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in R315-8-6.9(g)(4) unless the demonstration made under R315-8-6.9(g)(6) successfully shows that a source other than the regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under R315-8-6.9(g)(6), the owner or operator shall:

(i) notify the Executive Secretary in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the Executive Secretary an application for a permit modification to make any appropriate changes to the detection monitoring program facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under R315-8-6.9.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he shall, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

6.10 COMPLIANCE MONITORING PROGRAM

An owner or operator required to establish a compliance monitoring program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility permit including:

(1) A list of the hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6;

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall install a groundwater monitoring system at the compliance point as specified under R315-8-6.6. The groundwater monitoring system shall comply with R315-8-6.8(a)(2), (b) and (c).

(c) The Executive Secretary will specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with R315-8-6.8(g) and (h).

(1) The owner or operator shall conduct a sampling program for each chemical parameter or hazardous waste constituent in accordance with R315-8-6.8(g).

(2) The owner or operator shall record groundwater

analytical data as measured and in form necessary for the determination of statistical significance under R315-8-6.8(h) for the compliance period of the facility.

(d) The owner or operator shall determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to R315-8-6.10(a), at a frequency specified under R315-8-6.10(f).

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method specified in the permit under R315-8-6.5. The method shall compare data collected at the compliance point to a concentration limit developed in accordance with R315-8-6.8(h).

(2) The owner or operator shall determine whether there is statistically significant evidence of increase contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Executive Secretary will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(e) The owner or operator shall determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(f) The Executive Secretary will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with R315-8-6.8(g). A sequence of at least four samples from each well, background and compliance wells, shall be collected at least semi-annually during the compliance period of the facility.

(g) The owner or operator shall analyze samples from all monitoring wells at the compliance point for all constituents contained in R315-50-14, which incorporates by reference 40 CFR, Appendix IX, at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in R315-8-6.9(f). If the owner or operator finds R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the R315-50-14, which incorporates by reference 40 CFR 264, Appendix IX, analysis. If the second analysis confirms the presence of new constituents, the owner or operator shall report the concentration of these additional constituents to the Executive Secretary within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he shall report the concentrations of these additional constituents to the Executive Secretary within seven days after completion of the initial analysis and add them to the monitoring list.

(h) If the owner or operator determines pursuant to R315-8-6.10(d) that any concentration limits under R315-8-6.5 are being exceeded at any monitoring well at the point of compliance he shall:

(1) Notify the Executive Secretary of this finding in writing within seven days. The notification shall indicate which concentration limits have been exceeded;

(2) Submit to the Executive Secretary an application for a permit modification to establish a corrective action program meeting the requirements of R315-8-6.11, within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Executive Secretary under R315-8-6.9(h)(5). The application shall at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under R315-8-6.10(a); and

(ii) A plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. The groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(i) If the owner or operator determines, pursuant to R315-8-6.10(d), that the groundwater concentration limits under R315-8-6.10 are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. In making a demonstration under R315-8-6.10(i), the owner or operator shall:

(1) Notify the Executive Secretary in writing within seven days that he intends to make a demonstration under R315-8-6.10(i);

(2) Within 90 days, submit a report to the Executive Secretary which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Executive Secretary an application for a permit modification to make any appropriate changes to the compliance monitoring program at the facility; and

(4) Continue to monitor in accord with the compliance monitoring program established under this section.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

6.11 CORRECTIVE ACTION PROGRAM

An owner or operator required to establish a corrective action program under this section shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under R315-8-6.3. The Executive Secretary will specify the groundwater protection standard in the facility permit, including:

(1) A list of hazardous constituents identified under R315-8-6.4;

(2) Concentration limits under R315-8-6.5 for each of those hazardous constituents;

(3) The compliance point under R315-8-6.6; and

(4) The compliance period under R315-8-6.7.

(b) The owner or operator shall implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The permit will specify the specific measures that will be taken.

(c) The owner or operator shall begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The Executive Secretary will specify that time period in the facility permit. If a facility permit includes a corrective action program in addition to a compliance monitoring program, the permit will specify when the corrective action will begin and the requirement will operate in lieu of R315-8-6.10(i)(2).

(d) In conjunction with a corrective action program, the owner or operator shall establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. The monitoring program may be based on the requirements for a compliance monitoring program under R315-8-6.10 and shall be as effective as that program in

determining compliance with the groundwater protection standard under R315-8-6.3 and in determining the success of a corrective action program under R315-8-6.11(e), where appropriate.

(e) In addition to the other requirements of this section, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under R315-8-6.4 that exceed concentration limits under R315-8-6.5 in groundwater:

(1) between the compliance point under R315-8-6.6 and the downgradient facility property boundary; and

(2) beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the action. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis.

(3) Corrective action measures under R315-8-6.11(e) shall be initiated and completed within a reasonable period of time considering the extent of contamination.

(4) Corrective action measures under this paragraph may be terminated once the concentration of hazardous constituents under R315-8-6.4 is reduced to levels below their respective concentration limits under R315-8-6.5.

(f) The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he shall continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area, including the closure period if he can demonstrate, based on data from the groundwater monitoring program under R315-8-6.11(d), that the groundwater protection standard of R315-8-6.3 has not been exceeded for a period of three consecutive years.

(g) The owner or operator shall report in writing to the Executive Secretary on the effectiveness of the corrective action program. The owner or operator shall submit these reports semi-annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he shall within 90 days, submit an application for a permit modification to the program.

6.12 CORRECTIVE ACTION FOR SOLID WASTE MANAGEMENT UNITS

(a) The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste shall institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in the unit.

(b) Corrective action will be specified in the permit in accordance with R315-8-6-12 and R315-8-21, which incorporates by reference 40 CFR 264.552 and 264.553. The permit will contain schedules of compliance for the corrective action, where such corrective action cannot be completed prior to issuance of the permit, and assurances of financial responsibility for completing the corrective action.

(c) The owner or operator shall implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Executive Secretary that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake the actions. The owner or operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address the releases will be determined on a case-by-case basis. Assurances of financial responsibility for corrective action shall be provided.

(d) This does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing, or disposing of hazardous wastes that are not remediation wastes.

R315-8-7. Closure and Post Closure.

The requirements as found in 40 CFR subpart G, 264.110 - 264.120, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(a) substitute "Board" for all references made to "Regional Administrator" except in 264.112 where "Regional Administrator" and "Director" means "Executive Secretary".

(b) substitute R315-3 for all general reference made to 40 CFR 124 and 270.

(c) substitute "The Utah Solid and Hazardous Waste Act" for all references made to the "Resource Conservation and Recovery Act" or "RCRA."

R315-8-8. Financial Requirements.

The requirements as found in 40 CFR subpart H, 264.140 - 264.151, 1998 ed., as amended by 63 FR 56710, October 22, 1998, are incorporated by reference with the following exceptions:

(a) substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator".

(b) substitute "Board" for all references to "Agency" or "EPA."

(c) substitute "The Utah Solid and Hazardous Waste Act" for all references to the "Resource Conservation and Recovery Act" or "RCRA."

R315-8-9. Use and Management of Containers.

9.1 APPLICABILITY

The rules in this section apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as provided otherwise in R315-8-1.

Under R315-2-7 and R315-2-11, if a hazardous waste is emptied from a container the residue remaining in the container is not considered a hazardous waste if the container is "empty" as defined in R315-2-7. In that event, management of the container is exempt from the requirements of this section.

9.2 CONDITION OF CONTAINERS

If a container holding hazardous waste is not in good condition, e.g., severe rusting, apparent structural defects, or if it begins to leak, the owner or operator shall transfer the hazardous waste from this container to a container that is in good condition or manage the waste in some other way that complies with the requirements of this section.

9.3 COMPATIBILITY OF WASTE WITH CONTAINERS

The owner or operator shall use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

9.4 MANAGEMENT OF CONTAINERS

(a) A container holding hazardous waste shall always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste shall not be opened, handled, or stored in a manner which may rupture the

container or cause it to leak.

Reuse of containers in transportation is governed by U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.

9.5 INSPECTIONS

At least weekly, the owner or operator shall inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. See R315-8-2.6(c) and R315-8-9.2 for remedial action required if deterioration or leaks are detected.

9.6 CONTAINMENT

(a) Container storage areas shall have a containment system that is designed and operated in accordance with R315-8-9.6(b), except as otherwise provided by R315-8-9.6(c).

(b) A containment system shall be designed and operated as follows:

(1) A base shall underlay the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed;

(2) The base shall be sloped or the containment system shall be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(3) The containment system shall have sufficient capacity to contain 10% of the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination;

(4) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in R315-8-9.6(b)(3) to contain any run-on which might enter the system; and

(5) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as is necessary to prevent overflow of the collection system.

If the collected material is a hazardous waste under R315-2, it shall be managed as a hazardous waste in accordance with all applicable requirements of these rules. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of section 402 of the Clean Water Act, as amended.

(c) Storage areas that store containers holding only wastes that do not contain free liquids need not have a containment system defined by R315-8-9.6(b), except as provided by R315-8-9.6(d) or provided that:

(1) The storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or

(2) The containers are elevated or are otherwise protected from contact with accumulated liquid.

(d) Storage areas that store containers holding the wastes listed below that do not contain free liquids shall have a containment system defined by R315-8-9.6(b):

(1) F020, F021, F022, F023, F026, and F027.

9.7 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Containers holding ignitable or reactive waste shall be located at least 15 meters, 50 feet, from the facility's property line. See R315-8-2.8(a) for additional requirements.

9.8 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

(a) Incompatible wastes, or incompatible wastes and materials, see 40 CFR 264, Appendix V for examples, shall not be placed in the same container, unless R315-8-2.8(b) is complied with.

(b) Hazardous waste shall not be placed in an unwashed container that previously held an incompatible waste or material. As required by R315-8-2.4, which incorporates by reference 40 CFR 264.13, the waste analysis plan shall include analyses needed to comply with R315-8-9.8(b). Also R315-8-2.8(c) requires waste analyses, trial tests or other documentation to assure compliance with R315-8-2.8(b). As required by R315-8-5.3, which incorporates by reference 40 CFR 264.73, the owner or operator shall place the results of each waste analysis and trial test, and any documented information, in the operating record of the facility.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device. The purpose of this section is to prevent fires, explosions, gaseous emission, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.

9.9 CLOSURE

At closure, all hazardous waste and hazardous waste residues shall be removed from the containment system. Remaining containers, liners, bases, and soil containing or contaminated with hazardous waste or hazardous waste residues shall be decontaminated or removed.

At closure, as throughout the operating period, unless the owner or operator can demonstrate in accordance with R315-2-3(d) that the solid waste removed from the containment system is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of these rules.

9.10 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of R315-8-17, which incorporates by reference 40 CFR subpart AA, R315-8-18, which incorporates by reference 40 CFR subpart BB, and R315-8-22, which incorporates by reference 40 CFR subpart CC.

R315-8-10. Tanks.

The requirements as found in 40 CFR 264, subpart J, 264.190 - 264.200, 1996 ed., as amended by 61 FR 59931, November 25, 1996, are adopted and incorporated by reference with the following exceptions:

(a) Substitute "Executive Secretary" for all references to "Administrator" or "Regional Administrator" found in subpart J except paragraph 264.193(g) which should have "Regional Administrator" replaced by "Board".

(b) Add, following January 12, 1988, in 40 CFR 265.191(a), "or by December 16, 1988 for non-HSWA existing tank systems."

(c) Replace 40 CFR 265.193(a)(2) to (4) with the following corresponding paragraphs:

(1) For all HSWA existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, or within two years after December 16, 1988 for non-HSWA existing tank systems;

(2) For those HSWA existing tank systems of known and documented age, within two years after January 12, 1987, or within two years after December 16, 1988 for non-HSWA existing tank systems, or when the tank system has reached 15 years of age, whichever comes later;

(3) For those HSWA existing tank systems for which the age cannot be documented, within eight years of January 12, 1987, or within eight years of December 16, 1988 for non-HSWA existing tank systems; but if the age of the facility is

greater than seven years, secondary containment shall be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, or within two years of December 16, 1988 for non-HSWA existing tank systems, whichever comes later; and

(d) Add, following the last January 12, 1987, in 40 CFR 265-193(a)(5), "or December 16, 1988 for non-HSWA tank systems."

R315-8-11. Surface Impoundments.

11.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste except as provided otherwise in R315-8-1.

11.2 DESIGN AND OPERATING REQUIREMENTS

(a) Any surface impoundment that is not covered by R315-8-11.2(f) or R315-7-18.9 shall have a liner for all portions of the impoundment, except for existing portions of such impoundments. The liner shall be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner, but not into the adjacent subsurface soil or groundwater or surface water, during the active life of the facility, provided that the impoundment is closed in accordance with R315-8-11.9(a)(1). For impoundments that will be closed in accordance with R315-8-11.5(a)(2), the liner shall be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner shall be:

(1) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of R315-8-11.2(a) if the Executive Secretary finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents, see R315-8-6.4, into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the Executive Secretary will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility".

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-11.2(a)(1)-(3).

(2) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-1} cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-4} m^2sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(3) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(4) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Executive Secretary may approve alternative design or operating practices to those specified in R315-8-11.2(c) if the owner or operator demonstrates to the Executive Secretary that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal system specified in R315-8-11.2(c); and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in R315-8-11.2(f) may be waived by the Executive Secretary for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics, and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of R315-8-11.2(c) on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of the impoundment, the owner or operator shall remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable given the specific site conditions and the nature and extent of contamination. If all contaminated soil is not removed or decontaminated, the owner or operator of the impoundment will comply with appropriate post-closure requirements, including but not limited to groundwater monitoring and corrective action:

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR 144.3; and

(C) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with a permit; or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from R315-8-11.2(c) if:

(1) The existing unit was constructed in compliance with the design standards of sections 3004 (o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) A surface impoundment shall be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on; malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment shall have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure to the dikes. In ensuring structural integrity, it shall not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The Executive Secretary will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

11.3 MONITORING AND INSPECTION

(a) During construction and installation, liners, except in the case of existing portions of surface impoundments exempt from R315-8-11.2(a), and cover systems, e.g., membranes, sheets, or coatings, shall be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation:

(1) Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a surface impoundment is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of overtopping control systems;

(2) Sudden drops in the level of the impoundment's contents; and

(3) Severe erosion or other signs of deterioration in dikes or other containment devices.

(c) Prior to the issuance of a permit and after any extended period of time, at least six months, during which the impoundment was not in service, the owner or operator shall obtain a certification from a qualified engineer that the impoundment's dike, including that portion of any dike which provides freeboard, has structural integrity. The certification shall establish, in particular, that the dike:

(1) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the impoundment; and

(2) Will not fail due to scouring or piping, without dependence on any liner system included in the surface impoundment construction.

(d)(1) An owner or operator required to have a leak detection system under R315-8-11.2(c) or (d) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

11.4 EMERGENCY REPAIRS; CONTINGENCY PLANS

(a) A surface impoundment shall be removed from service in accordance with R315-8-11.4(b) when:

(1) The level of liquids in the impoundment suddenly drops and the drop is not known to be caused by changes in the flows into or out of the impoundment; or

(2) The dike leaks.

(b) When a surface impoundment shall be removed from service as required by R315-8-11.4(a), the owner or operator shall:

(1) Immediately shut off the flow or stop the addition of wastes into the impoundment;

(2) Immediately contain any surface leakage which has occurred or is occurring;

(3) Immediately stop the leak;

(4) Take any necessary steps to stop or prevent

catastrophic failure;

(5) If a leak cannot be stopped by any other means, empty the impoundment; and

(6) Notify the Executive Secretary of the problem in writing within seven days after detecting the problem.

(c) As part of the contingency plan required in R315-8-4, the owner or operator shall specify a procedure for complying with the requirements of R315-8-11.4(b).

(d) No surface impoundment that has been removed from service in accordance with the requirements of this section may be restored to service unless the portion of the impoundment which was failing is repaired and the following steps are taken:

(1) If the impoundment was removed from service as the result of actual or imminent dike failure, the dike's structural integrity shall be recertified in accordance with R315-8-11.3(c).

(2) If the impoundment was removed from service as the result of a sudden drop in the liquid level, then:

(i) For any existing portion of the impoundment, a liner shall be installed in compliance with R315-8-11.2(a), and

(ii) For any other portion of the impoundment, the repaired liner system shall be certified by a qualified engineer as meeting the design specifications approved in the permit.

(e) A surface impoundment that has been removed from service in accordance with the requirements in this section and that is not being repaired shall be closed in accordance with the provisions of R315-8-11.5.

11.5 CLOSURE AND POST-CLOSURE CARE

(a) At closure, the owner or operator shall:

(1) Remove or decontaminate all waste residues, contaminated containment system components, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous wastes unless R315-2-3(d) applies; or

(2)(i) Eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

(ii) Stabilize remaining wastes to a bearing capacity sufficient to support final cover; and

(iii) Cover the surface impoundment with a final cover designed and constructed to:

(A) Provide long-term minimization of the migration of liquids through the closed impoundment;

(B) Function with minimum maintenance;

(C) Promote drainage and minimize erosion or abrasion of the final cover;

(D) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator shall comply with all post-closure requirements contained in R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, including maintenance and monitoring throughout the post-closure care period, specified in the permit under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Maintain and monitor the leak detection system in accordance with R315-8-11.2(c)(2)(iv) and (3) and R315-8-11.3(d), and comply with all other applicable leak detection system requirements of this part;

(3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of R315-8-6; and

(4) Prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c)(1) If an owner or operator plans to close a surface impoundment in accordance with R315-8-11.5(a)(1), and the impoundment does not comply with the liner requirements of R315-8-11.2(a) and is not exempt from them in accordance with R315-8-11.2(b), then:

(i) The closure plan for the impoundment under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, shall include both a plan for complying with R315-8-11.5(a)(1) and a contingent plan for complying with R315-8-11.5(a)(2) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) The owner or operator shall prepare a contingent post-closure plan under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for complying with R315-8-11.5(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151, for closure and post-closure care of an impoundment subject to this paragraph shall include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under R315-8-11.5(a)(1).

11.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a surface impoundment unless the waste and impoundment satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, R315-50-12, which incorporates by reference 40 CFR 268 Appendix I, and R315-50-13, which incorporates by reference 40 CFR 268 Appendix II, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f), and

(2) R315-8-2.8(b) is complied with; or

(b) The waste is managed in a way that it is protected from any material or conditions which may cause it to ignite or react; or

(c) The surface impoundment is used solely for emergencies.

11.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials, see 40 CFR 264, Appendix V for examples, shall not be placed in the same surface impoundment, unless R315-8-2.8(b) is complied with.

11.8 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE F020, F021, F022, F023, F026, AND F027

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a surface impoundment unless the owner or operator operates the surface impoundment in accordance with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Executive Secretary may determine that additional design, operating, and monitoring requirements are necessary

for surface impoundments managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

11.9 ACTION LEAKAGE RATE

(a) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-8-11.2(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-8-11.3(d) to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and if the unit is closed in accordance with R315-8-11.5(b), monthly during the post-closure care period when monthly monitoring is required under R315-8-11.3(d).

11.10 RESPONSE ACTIONS

(a) The owner or operator of surface impoundment units subject to R315-8-11.2(c) or (d) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-8-11.10(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-8-11.10(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and remediation determinations in R315-8-11.10(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

11.11 AIR EMISSION STANDARDS

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of R315-8-18, which incorporates by reference 40 CFR subpart BB, and R315-8-22, which incorporates by reference 40 CFR subpart CC.

R315-8-12. Waste Piles.

12.1 APPLICABILITY

(a) The rules in this section apply to owners and operators of facilities that store or treat hazardous waste in piles, except as provided otherwise in R315-8-1.

(b) The rules in this section do not apply to owners or operators of waste piles that are closed with wastes left in place. These waste piles are subject to the rules under R315-8-14, Landfills.

(c) The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither run-off nor leachate is generated is not subject to regulation under R315-8-12.2 or R315-8-6, provided that:

(1) Liquids or materials containing free liquids are not placed in the pile;

(2) The pile is protected from surface water run-on or groundwater run-on by the structure or in some other manner;

(3) The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting; and

(4) The pile will not generate leachate through decomposition or other reactions.

12.2 DESIGN AND OPERATING REQUIREMENTS

(a) A waste pile, except for an existing portion of a waste pile, shall have:

(1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself, but not into the adjacent subsurface soil or groundwater or surface water, during the active life of the facility. The liner shall be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(ii) Designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of R315-8-12.2(a) if the Executive Secretary finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents, see R315-8-6.4, into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the Executive Secretary will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10 under "existing facility".

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-12.2(a)(1)(i), (ii), and (iii).

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post-closure care period. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall comply with R315-8-12.2(c)(3)(iii) and (iv).

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more:

(iii) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of groundwater.

(d) The Executive Secretary may approve alternative design or operating practices to those specified in R315-8-12.2(c) if the owner or operator demonstrates to the Executive Secretary that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in R315-8-12.2(c); and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) R315-8-12.2(c) does not apply to monofills that are granted a waiver by the Executive Secretary in accordance with R315-8-11.2(h).

(f) The owner or operator of any replacement waste pile unit is exempt from R315-8-12.2(c) if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

(h) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(i) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the pile to control wind dispersal.

(k) The Executive Secretary will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

12.3 MONITORING AND INSPECTION

(a) During construction or installation, liners, except in the

case of existing portions of piles exempt from R315-8-12.2(a), and cover systems, e.g., membranes, sheets, or coatings, shall be inspected for uniformity, damage, and imperfections, e.g., holes, cracks, thin spots, or foreign materials. Immediately after construction or installation:

(1) Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a waste pile is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) Proper functioning of wind dispersal control systems, where present; and

(3) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) An owner or operator required to have a leak detection system under R315-8-12.2(c) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

12.4 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a waste pile unless the waste and waste pile satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, R315-50-12, which incorporates by reference 40 CFR 268 Appendix I, and R315-50-13, which incorporates by reference 40 CFR 268 Appendix II, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the pile so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) R315-8-2.8(b) is complied with; or

(b) The waste is managed in a way that it is protected from any material or condition which may cause it to ignite or react.

12.5 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

(a) Incompatible wastes, or incompatible wastes and materials shall not be placed in the same pile, unless R315-8-2.8(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in containers, other piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(c) Hazardous waste shall not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with R315-8-2.8(b).

12.6 CLOSURE AND POST-CLOSURE CARE

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system compoundments, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless R315-2-3(d) applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in R315-8-12.6(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120.

(c)(1) The owner or operator of a waste pile that does not comply with the liner requirements of R315-8-12.2(a)(1), and is not exempt from them in accordance with R315-8-12.1(c) or R315-8-12.2(b) shall:

(i) Include in the closure plan for the pile under R315-8-7.3 both a plan for complying with R315-8-12.6(a) and a contingent plan for complying with R315-8-12.6(b) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for complying with R315-8-12.6(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151, for closure and post-closure care of a pile subject to this paragraph shall include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under R315-8-12.6(a).

12.7 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTES F020, F021, F022, F023, F026, AND F027

(a) Hazardous Wastes F020, F021, F022, F023, F026 and F027 shall not be placed in waste piles that are not enclosed, as defined in R315-8-12.1(c), unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlaying and surrounding soils or other materials:

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Executive Secretary may determine that additional design, operating, and monitoring requirements are necessary for piles managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

12.8 ACTION LEAKAGE RATE

(a) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-8-12.2(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly flow rate from the monitoring data obtained under R315-8-12.3(c), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be

calculated weekly during the active life and closure period.

12.9 RESPONSE ACTIONS

(a) The owner or operator of waste pile units subject to R315-8-12.2(c) or (d) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-8-12.9(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and long-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-8-12.9(b)(3), (4), and (5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-8-12.9(b)(3), (4), and (5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

R315-8-13. Land Treatment.

13.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as provided otherwise in R315-8-1.

13.2 TREATMENT PROGRAM

(a) An owner or operator subject to this section shall establish a land treatment program that is designed to ensure that hazardous constituents placed in or on the treatment zone are degraded, transformed, or immobilized within the treatment zone. The Executive Secretary will specify in the facility permit the elements of the treatment program, including:

(1) The wastes that are capable of being treated at the unit based on demonstration under R315-8-13.3;

(2) Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with R315-8-13.4(a); and

(3) Unsaturated zone monitoring provisions meeting the requirements of R315-8-13.6.

(b) The Executive Secretary will specify in the facility permit the hazardous constituents that shall be degraded, transformed, or immobilized under this section. Hazardous constituents are constituents identified in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(c) The Executive Secretary will specify the vertical and horizontal dimensions of the treatment zone in the facility permit. The treatment zone is the portion of the unsaturated zone below and including the land surface in which the owner or operator intends to maintain the conditions necessary for effective degradation, transformation, or immobilization of hazardous constituents. The maximum depth of the treatment zone shall be:

(1) No more than 1.5 meters, five feet, from the initial soil surface; and

(2) More than 1 meter, three feet, above the seasonal high water table.

13.3 TREATMENT DEMONSTRATION

(a) For each waste that will be applied to the treatment zone, the owner or operator shall demonstrate, prior to application of the waste, that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone.

(b) In making this demonstration, the owner or operator may use field tests, laboratory analyses, available data, or, in the case of existing units, operating data. If the owner or operator intends to conduct field tests or laboratory analyses in order to make the demonstration required under R315-8-13.3(a), he shall obtain a treatment or disposal permit under R315-3-6.4. The Executive Secretary will specify in this plan the testing, analytical, design, and operating requirements, including the duration of the tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities necessary to meet the requirements in R315-8-13.3(c).

(c) Any field test or laboratory analysis conducted in order to make a demonstration under R315-8-13.3(a) shall:

(1) Accurately simulate the characteristics and operating conditions for the proposed land treatment unit including:

(i) The characteristics of the waste, including the presence of R315-50-10 constituents, which incorporates by reference 40 CFR 261, Appendix VIII;

(ii) The climate in the area;

(iii) The topography of the surrounding area;

(iv) The characteristics of the soil in the treatment zone, including depth; and

(v) The operating practices to be used at the unit.

(2) Be able to show that hazardous constituents in the waste to be tested will be completely degraded, transformed, or immobilized in the treatment zone of the proposed land treatment unit; and

(3) Be conducted in a manner that protects human health and the environment considering;

(i) The characteristics of the waste to be tested;

(ii) The operating and monitoring measures taken during the course of the test;

(iii) The duration of the test;

(iv) The volume of the waste used in the test;

(v) In the case of field tests, the potential for migration of hazardous constituents to groundwater or surface water.

13.4 DESIGN AND OPERATING REQUIREMENTS

The Executive Secretary will specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(a) The owner or operator shall design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator shall design, construct, operate, and maintain the unit in accord with all design and operating conditions that were used in the treatment

demonstration under R315-8-13.3. At a minimum, the Executive Secretary will specify the following in the facility plan:

(1) The rate and method of waste application to the treatment zone;

(2) Measures to control soil pH;

(3) Measures to enhance microbial or chemical reactions, e.g., fertilization, tilling; and

(4) Measures to control the moisture content of the treatment zone.

(b) The owner or operator shall design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(c) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 25-year storm.

(d) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(e) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(f) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator shall manage the unit to control wind dispersal.

(g) The owner or operator shall inspect the unit weekly and after storms to detect evidence of:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(2) Improper functioning of wind dispersal control measures.

13.5 FOOD-CHAIN CROPS

The Executive Secretary may allow the growth of food-chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The Executive Secretary will specify in the facility plan the specific food-chain crops which may be grown.

(a)(1) The owner or operator shall demonstrate that there is no substantial risk to human health caused by the growth of the crops in or on the treatment zone by demonstrating, prior to the planting of the crops, that hazardous constituents other than cadmium:

(i) Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food-chain animals, e.g., by grazing; or

(ii) Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(2) The owner or operator shall make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under this paragraph, the owner or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and shall:

(i) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics, e.g., pH, cation exchange capacity, specific wastes, application rates, application methods, and crops to be grown; and

(ii) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he shall obtain a permit for conducting these activities.

(b) The owner or operator shall comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(1)(i) The pH of the waste and soil mixture shall be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of two mg/kg, dry weight, or less;

(ii) The annual application of cadmium from waste shall not exceed 0.5 kilograms per hectare, kg/ha, on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food-chain crops, and annual cadmium application rate shall not exceed:

TABLE

Time Period	Annual Cd Application Rate (kilograms per hectare)
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(iii) The cumulative application of cadmium from waste shall not exceed five kg/ha if the waste and soil mixture has a pH less than 6.5; and

(iv) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste shall not exceed: five kg/ha if soil cation exchange capacity (CEC) is less than five meq/100g; 10 kg/ha if soil CEC is 5-15 meq/100g; and 20 kg/ha if soil CEC is greater than 15 meq/100g; or

(2)(i) Animal feed shall be the only food-chain crop produced;

(ii) The pH of the waste and soil mixture shall be 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level shall be maintained whenever food-chain crops are grown;

(iii) There shall be an operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan shall describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food-chain, which may result from alternative land uses; and

(iv) Future property owners shall be notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food-chain crops shall not be grown except in compliance with R315-8-13.5(b)(2).

13.6 UNSATURATED ZONE MONITORING

An owner or operator subject to this section shall establish an unsaturated zone monitoring program to discharge the following responsibilities:

(a) The owner or operator shall monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

(1) The Executive Secretary will specify the hazardous constituents to be monitored in the facility plan. The hazardous constituents to be monitored are those specified under R315-8-13.2(b).

(2) The Executive Secretary may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified under R315-8-13.2(b). PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and

immobilization. The Board will establish PHCs if they find, based on the waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment to at least equivalent levels for the other hazardous constituents in the waste.

(b) The owner or operator shall install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system shall consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that;

(1) Represent the quality of background soil-pore liquid and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

(2) Indicate the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

(c) The owner or operator shall establish a background value for each hazardous constituent to be monitored under R315-8-13.6(a). The permit will specify the background values for each constituent or specify the procedures to be used to calculate the background values.

(1) Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment zone.

(2) Background soil-pore liquid values shall be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment zone.

(3) The owner or operator shall express all background values in a form necessary for the determination of statistically significant increases under R315-8-13.6(f).

(4) In taking samples used in the determination of all background values, the owner or operator shall use an unsaturated zone monitoring system that complies with R315-8-13.6(b)(1).

(d) The owner or operator shall conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The Executive Secretary will specify the frequency and timing of soil and soil-pore liquid monitoring in the facility permit after considering the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator shall express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under R315-8-13.6(f).

(e) The owner or operator shall use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment zone. At a minimum, the owner or operator shall implement procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(f) The owner or operator shall determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under R315-8-13.6(a) below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under R315-8-13.6(d).

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent, as determined under R315-8-13.6(d), to the background value for that constituent according to the statistical procedure specified in the facility plan under this paragraph.

(2) The owner or operator shall determine whether there has been a statistically significant increase below the treatment zone within a reasonable time period after completion of sampling. The Executive Secretary will specify that time period in the facility plan after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of soil and soil-pore liquid samples.

(3) The owner or operator shall determine whether there is a statistically significant increase below the treatment zone using a statistical procedure that provides reasonable confidence that migration from the treatment zone will be identified. The Executive Secretary will specify a statistical procedure in the facility plan that he finds:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying migration from the treatment zone and the probability of failing to identify real migration from the treatment zone.

(g) If the owner or operator determines, pursuant to R315-8-13.6(f), that there is a statistically significant increase of hazardous constituents below the treatment zone he shall:

(1) Notify the Board of this finding in writing within seven days. The notification shall indicate what constituents have shown statistically significant increases.

(2) Within 90 days, submit to the Executive Secretary an application for permit modification to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

(h) If the owner or operator determines, pursuant to R315-8-13.6(f), that there is a statistically significant increase of hazardous constituents below the treatment zone, he may demonstrate that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under R315-8-13.6(g)(2), he is not relieved of the requirement to submit a plan modification application within the time specified in R315-8-13.6(g)(2) unless the demonstration made under this paragraph successfully shows that a source other than regulated units caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator shall:

(1) Notify the Board or its duly authorized representative in writing within seven days of determining a statistically significant increase below the treatment zone that he intends to make a determination under this paragraph;

(2) Within 90 days, submit a report to the Board demonstrating that a source other than the regulated units caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days, submit to the Executive Secretary an application for a permit modification to make any appropriate changes to the unsaturated zone monitoring program at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring program established under this section.

13.7 RECORDKEEPING

The owner or operator shall include hazardous waste application dates, rates, and amounts in the operating record required under R315-8-5.3, which incorporates by reference 40 CFR 264.73.

13.8 CLOSURE AND POST-CLOSURE CARE

(a) During the closure period the owner or operator shall:

(1) Continue all operations, including pH control, necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under R315-8-13.4(a), except to the extent such measures are inconsistent with R315-8-13.8(a)(8);

(2) Continue all operations in the treatment zone to

minimize run-off of hazardous constituents as required under R315-8-13.4(b);

(3) Maintain the run-on control system required under R315-8-13.4(c);

(4) Maintain the run-off management system required under R315-8-13.4(d);

(5) Control wind dispersal of hazardous waste if required under R315-8-13.4(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under R315-8-13.5;

(7) Continue unsaturated zone monitoring in compliance with R315-8-13.6 except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) Establish a vegetative cover on the portion of the facility being closed at a time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover shall be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, when closure is completed the owner or operator may submit to the Board certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period the owner or operator shall:

(1) Continue all operations, including pH control necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that these measures are consistent with other post-closure care activities;

(2) Maintain a vegetative cover over closed portions of the facility;

(3) Maintain the run-on control system required under R315-8-13.4(c);

(4) Maintain the run-off management system required under R315-8-13.4(d);

(5) Control wind dispersal of hazardous waste if required under R315-8-13.4(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under R315-8-13.5; and

(7) Continue unsaturated zone monitoring in compliance with R315-8-13.6, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under R315-8-13.8(a)(8) and (c) if the Board finds that the level of hazardous constituents in the treatment zone soil does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in R315-8-13.8(d)(3). The owner or operator may submit such a demonstration to the Board at any time during the closure or post-closure care periods. For the purposes of this paragraph:

(1) The owner or operator shall establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility plan under R315-8-13.2(b).

(i) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(ii) The owner or operator shall express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under R315-8-13.8(d)(3).

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator shall take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by leakage from the treatment zone and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator shall use a statistical procedure that:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under section R315-8-6 if the Board finds that the owner or operator satisfies R315-8-13.8(d) and if unsaturated zone monitoring under R315-8-13.6 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

13.9 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

The owner or operator shall not apply ignitable or reactive waste to the treatment zone unless the waste and the treatment zone meet all applicable requirements of R315-13, R315-50-12, and R315-50-13, which incorporate by reference 40 CFR 268, and:

(a) The waste is immediately incorporated into the soil so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) Section R315-8-2.8(b) is complied with; or

(b) The waste is managed in a way that it is protected from any material or conditions which may cause it to ignite or react.

13.10 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

The owner or operator shall not place incompatible wastes, or incompatible wastes and materials, see 40 CFR 264, Appendix V for examples, in or on the same treatment zone, unless R315-8-2.8(b) is complied with.

13.11 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTES F020, F021, F022, F023, F026, F027

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a land treatment unit unless the owner or operator operates the facility in accordance with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Board may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous waste F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

R315-8-14. Landfills.

14.1 APPLICABILITY

The rules in this section apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as R315-8-1 provides otherwise.

14.2 DESIGN AND OPERATING REQUIREMENTS

(a) Any landfill that is not covered by R315-8-14.2(c) or R315-7-21.2(a) shall have a liner system for all portions of the landfill, except for existing portions of the landfill. The liner system shall have:

(1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the landfill. The liner shall be constructed of material that prevents wastes from passing into the liner during the active life of the facility. The liner shall be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients, including static head and external hydrogeologic forces, physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth at any point on the liner system, does not exceed 30 cm, one foot. The leachate collection and removal system shall be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(ii) Designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of R315-8-14.2(a) if the Board finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents, see R315-8-6.4, into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the Board will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility."

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-14.2(a)(1)(i), (ii), and (iii).

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The Executive Secretary will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall comply with R315-8-14.2(c)(3)(iii) and (iv).

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

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

(iii) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Executive Secretary may approve alternative design or operating practices to those specified in R315-8-

14.2(c) if the owner or operator demonstrates to the Executive Secretary that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in R315-8-14.2(c); and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) The double liner requirement set forth in R315-8-14.2(h) may be waived by the Board for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and the wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristics in R315-2-9(g) and EPA Hazardous Waste Numbers D004 through D017; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that the liner is leaking:

(B) The monofill is located more than one-quarter mile from an underground source of drinking water, as that term is defined in 40 CFR 144.3; and

(C) The monofill is in compliance with generally applicable groundwater monitoring requirements for facilities with permit; or

(ii) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement landfill unit is exempt from R315-8-14.2(c) if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(h) The owner or operator shall design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(i) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the landfill to control wind dispersal.

(k) The Executive Secretary will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

14.3 MONITORING AND INSPECTION

(a) During construction or installation, liners, except in the case of existing portions of landfills exempt from R315-8-14.2(a), and cover systems, e.g., membranes, sheets, or coatings, shall be inspected for uniformity, damage, and imperfections, e.g., holes, cracks, thin spots, or foreign materials. Immediately after construction or installation:

(1) Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a landfill is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) Proper functioning of wind dispersal control systems, where present; and

(3) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c)(1) An owner or operator required to have a leak detection system under R315-8-14.2(c) or (d) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

(2) After the final cover is installed, the amount of liquids removed from each leak detection system sump shall be recorded at least monthly. If the liquid level in the sump stays below the pump operating level for two consecutive months, the amount of liquids in the sumps shall be recorded at least quarterly. If the liquid level in the sump stays below the pump operating level for two consecutive quarters, the amount of liquids in the sumps shall be recorded at least semi-annually. If at any time during the post-closure care period the pump operating level is exceeded at units on quarterly or semi-annual recording schedules, the owner or operator shall return to monthly recording of amounts of liquids removed from each sump until the liquid level again stays below the pump operating level for two consecutive months.

(3) "Pump operating level" is a liquid level proposed by the owner or operator and approved by the Executive Secretary based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

14.4 SURVEYING AND RECORDKEEPING

The owner or operator of a landfill shall maintain the following items in the operating record required under R315-8-5.3, which incorporates by reference 40 CFR 264.73:

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed bench marks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

14.5 CLOSURE AND POST-CLOSURE CARE

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator shall comply with all post-closure requirements contained under R315-8-9.8 and R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, including maintenance and monitoring throughout the post-closure care period, specified in the permit, under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) Maintain and monitor the leak detection system in

accordance with R315-8-14.2(c)(3)(iv) and (4) and R315-8-14.3(c), and comply with all other applicable leak detection system requirements of R315-8;

(4) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of these rules;

(5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) Protect and maintain surveyed bench marks used in complying with R315-8-14.4.

14.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Except as provided in R315-8-14.6(b), and in R315-8-14.10, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of R315-13, R315-50-12, and R315-50-13, which incorporate by reference 40 CFR 268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) R315-8-2.8(b) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in R315-13, which incorporates by reference 40 CFR 268 subpart D, ignitable wastes in containers may be landfilled without meeting the requirements of R315-8-14.6(a), provided that the wastes are disposed of in a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes shall be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; shall be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and shall not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

14.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials shall not be placed in the same landfill cell, unless R315-8-2.8(b) is complied with.

14.8 SPECIAL REQUIREMENTS FOR LIQUID WASTE

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill, prior to May 8, 1985, if:

(1) The landfill has a liner and leachate collection and removal system that meet the requirements of R315-8-14.2(a); or

(2) Before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically, e.g., by mixing with a sorbent solid, so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited.

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test shall be used: Method 9095, Paint Filter Liquids Test, as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." EPA Publication No. SW-846 as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(d) Containers holding free liquids shall not be placed in a landfill unless:

(1) All free-standing liquid:

(i) Has been removed by decanting, or other methods;

(ii) Has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) Has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in R315-8-14.10, and is disposed of in accordance with R315-8-14.10.

(e) Sorbents used to treat free liquids to be disposed of in landfills shall be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in R315-8-14.8(e)(1); materials that pass one of the tests in R315-8-14.8(e)(2); or materials that are determined by EPA to be nonbiodegradable through the R315-2-16, which incorporates by reference 40 CFR 260.22, petition process.

(1) Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon, e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon; or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under the Organization for Economic Cooperation and Development (OECD) test 301B, CO_2 Evolution, Modified Sturm Test.

(f) Effective November 8, 1985, the landfill placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Board, or the Board determines that;

(1) The only reasonably available alternative to the placement in the landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in the owner or operator's landfill will not present a risk of contamination of any underground source of drinking water, as that term is defined in 40 CFR 144.3.

14.9 SPECIAL REQUIREMENTS FOR CONTAINERS

Unless they are very small, such as an ampule, containers shall be either:

(a) At least 90 percent full when placed in the landfill; or

(b) Crushed, shredded, or similarly reduced in volume to the maximum practical extent before burial in the landfill.

14.10 DISPOSAL OF SMALL CONTAINERS OF HAZARDOUS WASTE IN OVERPACKED DRUMS, LAB PACKS

Small containers of hazardous waste in overpacked drums, lab packs, may be placed in a landfill if the following requirements are met:

(a) Hazardous waste shall be packaged in non-leaking inside containers. The inside containers shall be of a design and

constructed of a material that will not react dangerously with, be decomposed by, or be ignited by the contained waste. Inside containers shall be tightly and securely sealed. The inside containers shall be of the size and type specified in the Department of Transportation (DOT) hazardous materials regulations, 49 CFR parts 173, 178, and 179, if those regulations specify a particular inside container for the waste.

(b) The inside containers shall be overpacked in an open head DOT - specification metal shipping container, 49 CFR parts 178 and 179, of no more than 416-liter, 110 gallon, capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with R315-8-14.8(e), to completely sorb all of the liquid contents of the inside containers. The metal outer container shall be full after it has been packed with inside containers and sorbent material.

(c) The sorbent material used shall not be capable of reacting dangerously with, being decomposed by, or being ignited by the contents of the inside containers in accordance with R315-8-2.8(b).

(d) Incompatible wastes, as defined in R315-1 shall not be placed in the same outside container.

(e) Reactive wastes, other than cyanide or sulfide bearing wastes as defined in R315-2-9(f)(v) shall be treated or rendered non-reactive prior to packaging in accordance with R315-8-14.10(a) through (d). Cyanide and sulfide bearing reactive waste may be packed in accordance with R315-8-14.10(a) through (d) without first being treated or rendered non-reactive.

(f) The disposal is in compliance with the requirements of R315-13, R315-50-12, and R315-50-13, which incorporate by reference 40 CFR 268. Persons who incinerate lab packs according to the requirements in R315-13, which incorporates by reference 40 CFR 268.42(c)(1), may use fiber drums in place of metal outer containers. Such fiber drums shall meet the DOT specification in 49 CFR 173.12 and be overpacked according to the requirements in R315-8-14.10(b).

14.11 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTES F020, F021, F022, F023, F026, AND F027

(a) Hazardous Wastes F020, F021, F022, F023, F026, and F027 shall not be placed in a landfill unless the owner or operator operates the landfill in accord with a management plan for these wastes that is approved by the Executive Secretary pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements. The factors to be considered are:

(1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring requirements.

(b) The Board may determine that additional design, operating and monitoring requirements are necessary for landfills managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to groundwater, surface water, or air so as to protect human health and the environment.

14.12 ACTION LEAKAGE RATE

(a) The Executive Secretary shall approve an action leakage rate for surface impoundment units subject to R315-8-14.2(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system, LDS, can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate shall include an adequate safety margin to allow for uncertainties in the design, e.g., slope, hydraulic conductivity, thickness of drainage material, construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions, e.g., the action leakage rate shall consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.

(b) To determine if the action leakage rate has been exceeded, the owner or operator shall convert the weekly or monthly flow rate from the monitoring data obtained under R315-8-14.3(c), to an average daily flow rate, gallons per acre per day, for each sump. Unless the Executive Secretary approves a different calculation, the average daily flow rate for each sump shall be calculated weekly during the active life and closure period, and monthly during the post-closure care period when monthly monitoring is required under R315-8-14.3(c).

14.13 RESPONSE ACTIONS

(a) The owner or operator of landfill units subject to R315-8-14.2(c) or (d) shall have an approved response action plan before receipt of waste. The response action plan shall set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan shall describe the actions specified in R315-8-14.13(b).

(b) If the flow rate into the leak detection system exceeds the action leakage rate for any sump, the owner or operator shall:

(1) Notify the Executive Secretary in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Executive Secretary within 14 days of the determination, as to the amount of liquids, likely sources of liquids, possible location, size, and cause of any leaks, and short-term actions taken and planned;

(3) Determine to the extent practicable the location, size, and cause of any leak;

(4) Determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the unit for inspection, repairs, or controls, and whether or not the unit should be closed;

(5) Determine any other short-term and longer-term actions to be taken to mitigate or stop any leaks; and

(6) Within 30 days after the notification that the action leakage rate has been exceeded, submit to the Executive Secretary the results of the analyses specified in R315-8-14.13(b)(3)-(5), the results of actions taken, and actions planned. Monthly thereafter, as long as the flow rate in the leak detection system exceeds the action leakage rate, the owner or operator shall submit to the Executive Secretary a report summarizing the results of any remedial actions taken and actions planned.

(c) To make the leak and/or remediation determinations in R315-8-14.13(b)(3)-(5), the owner or operator shall:

(1)(i) Assess the source of liquids and amounts of liquids by source;

(ii) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the leak detection system to identify the source of liquids and possible location of any leaks, and the hazard and mobility of the liquid; and

(iii) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or

(2) Document why such assessments are not needed.

R315-8-15. Incinerators.

15.1 APPLICABILITY

(a) The rules in this section apply to owners or operators of facilities that incinerate hazardous waste, as defined in 40 CFR 260.10, except as R315-8-1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by R315-8-15.1(b)(2), (3), and (4)

the standards of R315-8 no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Executive Secretary a Notification of Compliance under R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(b), documenting compliance with the requirements of 307-214-2, which incorporates by reference 40 CFR 63, subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, hazardous waste permit conditions that were based on the standards of R315-8 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(2) The MACT standards do not replace the closure requirements of R315-8-15.8 or the applicable requirements of R315-8-1 through R315-8-8, R315-8-18, which incorporates by reference 40 CFR 264 subpart BB, and R315-8-22, which incorporates by reference 40 CFR 264 subpart CC.

(3) The particulate matter standard of R315-8-15.4(b) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of R307-214-2, which incorporates by reference to CFR 63.1206(b)(14).

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply with R315-3-9(a)(1)(i) to minimize emissions of toxic compounds from these events:

(i) R315-8-15.6(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) R315-8-15.6(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

(c) After consideration of the waste analysis included with part B of the permit application, the Executive Secretary, in establishing the permit conditions, shall exempt the applicant from all requirements of this section except R315-8-15.2, Waste Analysis and R315-8-15.8, Closure,

(1) If the Executive Secretary finds that the waste to be burned is:

(i) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is ignitable, Hazard Code I, corrosive Hazard Code C, or both; or

(ii) Listed as a hazardous waste in R315-2-10 or R315-2-11 solely because it is reactive, Hazard Code R, for characteristics other than those listed in R315-2-9(f)(1)(iv) and (v), and will not be burned when other hazardous wastes are present in the combustion zone; or

(iii) A hazardous waste solely because it possesses the characteristics of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under R315-2-9, or

(iv) A hazardous waste solely because it possesses any of the reactivity characteristics described by R315-2-9(f)(1)(i), (ii), (iii), (vi), (vii), and (viii) and will not be burned when other hazardous wastes are present in the combustion zone; and

(2) If the waste analysis shows that the waste contains none of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, which could reasonably be expected to be in the waste.

(d) If the waste to be burned is one which is described by R315-8-15.1(c)(1)(i), (ii), (iii), or (iv) and contains insignificant concentrations of the hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, then the Executive Secretary may, in establishing permit conditions, exempt the applicant from all requirements of this section except R315-8-15.2, Waste analysis and R315-8-15.8, Closure, after consideration of the waste analysis included with part B of the permit application, unless the Executive Secretary finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

(e) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of R315-3-6.3.

15.2 WASTE ANALYSIS

(a) As a portion of the trial burn plan required by R315-3-6.3 or with part B of the permit the owner or operator shall have included an analysis of the waste feed sufficient to provide all information required by R315-3-6.3(b) or R315-3-2.10. Owners or operators of new hazardous waste incinerators shall provide the information required by R315-3-6.3(c) or R315-3-2.10 to the greatest extent possible.

(b) Throughout normal operation the owner or operator shall conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit, R315-8-15.6.

15.3 PRINCIPAL ORGANIC HAZARDOUS CONSTITUENTS (POHCS)

(a) Principal Organic Hazardous Constituents (POHCs) in the waste feed shall be treated to the extent required by the performance standard of R315-8-15.4.

(b)(1) One or more POHCs will be specified in the facility's permit, from among these constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with part B of the permit. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(2) Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified R315-3-6.3 for obtaining trial burn permits.

15.4 PERFORMANCE STANDARDS

An incinerator burning hazardous waste shall be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under R315-8-15.6, it will meet the following performance standards:

(a)(1) An incinerator burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated, R315-8-15.3, in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$DRE = (W_{in} - W_{out}) / W_{in} \times 100\%$

Where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator, and

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour, 4 pounds per hour, of hydrogen chloride (HC1) shall control HC1 emissions so that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or one percent of the HC1 in the stack gas prior to entering any pollution control equipment.

(b) An incinerator burning hazardous waste shall not emit particulate matter in excess of 180 milligrams per dry standard cubic meter, 0.08 grains per dry standard cubic foot, when corrected for the amount of oxygen in the stack gas according to the formula:

$P_c = P_m \times 14 / (21-Y)$

When P_c is correct concentration of particulate matter, P_m is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, as presented in 40 CFR 60 Appendix A Method 3. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the Executive Secretary will select an appropriate correction procedure, to be specified in the facility permit.

(c) For purposes of permit enforcement, compliance with the operating requirements specified in the permit under R315-8-15.6 will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under R315-3-4.2.

(d) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 shall achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated, under R315-8-15.3, in its permit. This performance shall be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in R315-8-15.4(a)(1). In addition, the owner or operator of the incinerator shall notify the Executive Secretary of his intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

15.5 HAZARDOUS WASTE INCINERATOR PERMITS

(a) The owner or operator of a hazardous waste incinerator may burn only wastes specified in his permit and only under operating conditions specified for those wastes under 8.15.6., except:

(1) In approved trial burns, R315-3-6.3, or

(2) Under exemptions created by R315-8-15.1.

(b) Other hazardous wastes may be burned after operating conditions have been specified in a new permit or a permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with part B of a permit under R315-3-2.10.

(c) The permit for a new hazardous waste incinerator shall establish appropriate conditions for each of the applicable requirements of this section including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of R315-8-15.6, sufficient to comply with the following standards:

(1) For the period beginning with initial introduction of hazardous waste to the incinerator and ending with initiation of the trial burn, and only for the minimum time required to establish operating conditions required in R315-8-15.5(c)(2), not to exceed a duration of 720 hours operating time for treatment of hazardous waste, the operating requirements shall be those most likely to ensure compliance with the performance standards in R315-8-15.4 based on the Executive Secretary's engineering judgement. The Executive Secretary may extend the duration of this period once for up to 720 additional hours when good cause for the extension is demonstrated by the applicant;

(2) For the duration of the trial burn, the operating requirements shall be sufficient to demonstrate compliance with the performance standards of R315-8-15.4 and shall be in accordance with the approved trial burn plan;

(3) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the Executive Secretary, the operating requirements shall be those most likely to ensure compliance with the performance standards of R315-8-15.4 based on the Executive Secretary's engineering judgement.

(4) For the remaining duration of the permit, the operating requirements shall be those demonstrated, in a trial burn or by alternative data specified in R315-3-2.10(c), as sufficient to ensure compliance with the performance standards of R315-8-15.4.

15.6 OPERATING REQUIREMENTS

(a) An incinerator shall be operated in accordance with operating requirements specified in the permit. These will be specified on a case-by-case basis as those demonstrated, in a trial burn or in alternative data as specified in R315-8-15.5(b), and included with part B of a facility's permit to be sufficient to comply with the performance standards of R315-8-15.4.

(b) Each set of operating requirements will specify the composition of the waste feed, including acceptable variations in the physical or chemical properties of the waste feed which will not affect compliance with the performance requirements of R315-8-15.4, to which the operating requirements apply. For each such waste feed, the permit will specify acceptable operating limits including the following conditions:

(1) Carbon monoxide (CO) level in the stack exhaust gas;

(2) Waste feed rate;

(3) Combustion temperature;

(4) An appropriate indicator of combustion gas velocity;

(5) Allowable variations in incinerator system design or operating procedures; and

(6) Any other operating requirements as are necessary to ensure that the performance standards of R315-8-15.4 are met.

(c) During start-up and shut-down of an incinerator, hazardous waste, except wastes exempted in accordance with R315-8-15.1, shall not be fed into the incinerator unless the incinerator is operating within the conditions of operation, temperature, air feed rate, etc., specified in the permit.

(d) Fugitive emissions from the combustion zone shall be controlled by:

(1) Keeping the combustion zone totally sealed against fugitive emissions; or

(2) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(3) An alternative means of control demonstrated, with part B of the permit to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

(e) An incinerator shall be operated with a functioning system to automatically cut off waste feed to the incinerator when operating conditions deviate from limits established under R315-8-15.6(a).

(f) An incinerator shall cease operation when changes in waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

15.7 MONITORING AND INSPECTIONS

(a) The owner or operator shall conduct, as a minimum, the following monitoring while incinerating hazardous waste:

(1) Combustion temperature, waste feed rate, and the indicator of combustion gas velocity specified in the facility permit shall be monitored on a continuous basis.

(2) Carbon monoxide (CO) shall be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

(3) Upon request by the Board, sampling and analysis of the waste and exhaust emissions shall be conducted to verify that the operating requirements established in the permit achieve the performance standards of R315-8-15.4.

(b) The incinerator and associated equipment, pumps, valves, conveyors, pipes, etc., shall be subjected to thorough visual inspection, at least daily, for leaks, spills, fugitive emissions, and signs of tampering.

(c) The emergency waste feed cutoff system and

associated alarms shall be tested at least weekly to verify operability, unless the applicant demonstrates to the Board that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing shall be conducted at least monthly.

(d) This monitoring and inspection data shall be recorded and the records shall be placed in the operating record required by R315-8-5.3, which incorporates by reference 264.73.

15.8 CLOSURE

At closure the owner or operator shall remove all hazardous waste and hazardous waste residues, including, but not limited to, ash, scrubber waters, and scrubber sludges, from the incinerator site.

At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-3(d), that the residue removed from the incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with applicable requirements. R315-4 - R315-9.

R315-8-16. Miscellaneous Units.

The requirements as found in 40 CFR 264, subpart X, which includes sections 264.600 through 264.603, 2000 ed., are adopted and incorporated by reference.

R315-8-17. Air Emission Standards for Process Vents.

The requirements as found in 40 CFR subpart AA sections 264.1030 through 264.1036, 1998 ed., as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

R315-8-18. Air Emission Standards for Equipment Leaks.

The requirements as found in 40 CFR subpart BB sections 264.1050 through 264.1065, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator."

R315-8-19. Drip Pads.

The requirements as found in 40 CFR subpart W sections 264.570 through 264.575, 1996 ed., are adopted and incorporated by reference with the following exception:

(1) substitute "Board" for all federal regulation references made to "Regional Administrator".

(2) Add, following December 6, 1990, in 40 CFR 264.570(a), "for all HSWA drip pads or January 31, 1992 for all non-HSWA drip pads."

(3) Add, following December 24, 1992, in 40 CFR 570(a), "for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads."

R315-8-20. Containment Buildings.

The requirements of subpart DD sections 264.1100 through 264.1110, as found in 57 FR 37194, August 18, 1992, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

R315-8-21. Corrective Action for Solid Waste Management Units.

The requirements of 40 CFR 264, subpart S, which includes sections 264.550 through 264.555, 2000 ed., as amended by 67 FR 2962, January 22, 2002, are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

R315-8-22. Air Emission Standards for Tanks, Surface Impoundments, and Containers.

The requirements as found in 40 CFR subpart CC, sections 264.1080 through 264.1091, 1998 ed., as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-9. Emergency Controls.
R315-9-1. Immediate Action.

In the event of a spill of hazardous waste or material which, when spilled, becomes hazardous waste, the person responsible for the material at the time of the spill shall immediately:

(a) Take appropriate action to minimize the threat to human health and the environment.

(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 if the following spill quantities are exceeded:

(1) One kilogram of material listed in paragraph R315-2-10(e), which includes F999 and incorporates by reference 40 CFR 261.31, and which is an acute hazardous waste identified with a hazard code of (H), or in R315-2-11(e), which incorporates by reference 40 CFR 261.33(e). Notify for a spill of a lesser quantity if there is a potential threat to human health or the environment; or

(2) One hundred kilograms of hazardous waste or material which, when spilled, becomes hazardous waste, other than that listed in R315-2-11(e), which incorporates by reference 40 CFR 261.33(e). Notify for a spill of a lesser quantity if there is a potential threat to human health or the environment.

(c) Provide the following information when reporting the spill:

(1) Name, phone number, and address of person responsible for the spill.

(2) Name, title, and phone number of individual reporting.

(3) Time and date of spill.

(4) Location of spill - as specific as possible including nearest town, city, highway or waterway.

(5) Description contained on the manifest and the amount of material spilled.

(6) Cause of spill.

(7) Emergency action taken to minimize the threat to human health and the environment.

(d) An air, rail, highway, or water transporter who has discharged hazardous waste shall:

(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, 800-424-8802 or 202-426-2675; and

(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(e) A water, bulk shipment, transporter who has discharged hazardous waste must give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

R315-9-2. Emergency Control Variance.

If a spill of hazardous waste requires immediate removal to protect human health or the environment, as determined by the Executive Secretary, a variance may be granted by the Executive Secretary to the manifest and recordkeeping requirements of these rules until the spilled material and any residue or contaminated soil, water or other material resulting from the spill no longer presents an immediate hazard to human health or the environment, as determined by the Executive Secretary.

R315-9-3. Spill Clean-up.

The person responsible for the material at the time of the spill shall clean up all the spilled material and any residue or contaminated media or other material resulting from the spill or take action as may be required by the Executive Secretary so that the spilled material, residue, or contaminated media no longer presents a hazard to human health or the environment as defined in R315-101. The cleanup or other required actions shall be at the expense of the person responsible for the spill. If the person responsible for the spill fails to take the required action, the Department may take action and bill the responsible person.

R315-9-4. Reporting.

Within 15 days after any spill of hazardous waste or material which, when spilled, becomes hazardous waste, and is reported under R315-9-1(b), the person responsible for the material at the time of the spill shall submit to the Board or the Executive Secretary a written report which contains the following information:

(a) The person's name, address, and telephone number;

(b) Date, time, location, and nature of the incident;

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

(d) The extent of injuries, if any;

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

(f) The estimated quantity and disposition of recovered material that resulted from the incident.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-12. Administrative Procedures.
R315-12-1. Application of Rule.

(a) This rule applies to proceedings under Title 19, Chapter 6, Part 1 (Solid and Hazardous Waste Act), Title 19, Chapter 6, Part 5 (Solid Waste Management Act), Title 19, Chapter 6, Part 6 (Lead Acid Battery Disposal), Title 19, Chapter 6, Part 7 (Used Oil Management Act), and Tile 26, Chapter 32a (Waste Tire Recycling).

(b) For purposes of these rules, an appeal under the Used Oil Management Act shall mean the process of agency decision making under the Utah Administrative Procedures Act (UAPA), Section 63-46b-0.5 through 63-46b-11, and the standards, deadlines, procedures, and other requirements for an appeal shall be same as the standards, deadlines, procedures, and other requirements for contesting the validity of an initial order or violation under R315-12.

R315-12-2. Orders, NOVs, and Other Decisions by the Executive Secretary.

2.1 INITIAL PROCEEDINGS EXEMPT FROM UAPA

Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Solid and Hazardous Waste Act are not governed by the provisions of the Utah Administrative Procedures Act (UAPA) as specified in Section 63-46b-1(2)(k). This includes initial proceedings regarding: approval, modification, denial, termination, transfer, revocation, or reissuance of permits; approval for equivalent testing or analytical methods; notices of violation and orders associated with notices of violation; orders for corrective action; and consent orders.

2.2 INITIAL ORDERS AND NOTICES OF VIOLATION ISSUED BY EXECUTIVE SECRETARY

(a) The initial orders and notices described in R315-12-2.1 shall be issued by the Executive Secretary.

(b) An initial order or notice shall become final in 30 days if not contested as described in R315-12-3. Failure to contest an initial order or notice waives any right of administrative review or judicial appeal.

R315-12-3. Contesting the Validity of an Initial Order or Notice of Violation Issued by the Executive Secretary.

3.1 CONTESTING THE VALIDITY OF AN INITIAL ORDER OR NOTICE OF VIOLATION -- REQUEST FOR AGENCY ACTION

(a) The validity of initial orders or notices of violation described in R315-12-2 may be contested by filing a written Request for Agency Action with the Board:

Solid and Hazardous Waste Control Board
Division of Solid and Hazardous Waste
288 North 1460 West
PO Box 144880
Salt Lake City, Utah 84114-4880.

(b) Any such request is governed by and shall comply with the requirements of Section 63-46b-3(3) of UAPA, and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.

3.2 RESPONSE TO REQUEST FOR AGENCY ACTION

Notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.

3.3 UAPA GOVERNS SUBSEQUENT PROCEEDINGS

A Request for Agency Action, and all subsequent proceedings acting on that request, are governed by UAPA. Section 63-46b-1(2)(k) of UAPA.

R315-12-4. Parties and Intervention.

4.1 WHO IS A PARTY?

(a) The following persons are Parties to a proceeding governed by this Rule:

(1) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by order of the Executive Secretary;

(2) The Executive Secretary; and

(3) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom intervention rights have been granted under R315-12-4.2.

(b) In a proceeding requested by the person to whom an initial order or notice of violation is directed, that person shall be the Petitioner and the Executive Secretary shall be the Respondent.

(c) In a proceeding requested by a person requesting intervention, the Intervenor shall be the Petitioner, provided that Intervention is granted, and the Executive Secretary and the person to whom an initial order or notice of violation is directed shall be the Respondents.

4.2 INTERVENTION

(a) A person who is not a party to a proceeding may request intervention under Section 63-46b-9 of UAPA for the purpose of filing a Request for Agency Action, and may simultaneously file that Request. Any such Requests for Intervention and Agency Action must be received by the Board for filing as provided in R315-12-3.1 within 30 days of the date of the challenged order or notice of violation.

(b) Any Party may, within 20 days or such earlier time as established by the Presiding Officer(s), respond to a Request for Intervention. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

4.3 Amicus curiae (Friend of the Court)

Persons may be permitted by the Presiding Officer(s) to enter an appearance as Amicus Curiae (Friend of the Court), subject to conditions established by the Presiding Officer(s).

4.4 APPEARANCES AND REPRESENTATION

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his or its interest in the proceeding.

(b) Any participant may be represented by an attorney at law.

R315-12-5. Conduct of Proceedings.

5.1 ROLE OF BOARD

(a) The Board is the "agency head" as that term is used in UAPA. The Board is also the "presiding officer," as that term is used in UAPA, except:

(1) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(2) The Board may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his/her authority as specified in this Rule to another Board member.

5.2 APPOINTED PRESIDING OFFICERS

Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer or Presiding Officers shall be for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order. See also R315-12-7.2 regarding orders of Presiding Officers.

5.3 DESIGNATION OF PROCEEDINGS AS FORMAL OR INFORMAL

(a) Proceedings pursuant to a Request for Agency Action shall be conducted formally if the Request for Agency Action is made to contest the validity of the following:

(1) An order regarding approval, modification, denial, termination, transfer, revocation, or reissuance of a permit;

(2) An order regarding approval, denial, or modification

of a corrective action, clean-up, or closure plan;

(3) A notice of violation or order associated with a notice of violation; or

(4) A consent order.

(b) The Board may convert proceedings which are designated to be formal to informal, and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. See Section 63-46b-4(3) of UAPA.

5.4 PRE-HEARING CONFERENCES

The Presiding Officer(s) may direct the Parties to appear at a specified time and place for a pre-hearing conference(s) for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

5.5 BRIEFS

(a) Unless otherwise directed by the Presiding Officer(s), parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Board. Parties are not required to submit pre-hearing or post-hearing briefs unless directed to do so by the Presiding Officer(s). Pre-hearing and post-hearing briefs shall not exceed 15 pages unless otherwise provided by the Presiding Officer for all Parties.

(b) Response briefs may not be filed unless permitted by the Presiding Officer(s).

5.6 PARTIES MAY PROPOSE SCHEDULE

Parties to a proceeding are encouraged to prepare a joint proposed schedule addressing the matters specified in R315-12-5.7. If the parties cannot agree on a joint proposed schedule, the Presiding Officer(s) may consider proposals by any party.

5.7 PRESIDING OFFICER(S) SHALL ESTABLISH SCHEDULES

The Presiding Officer(s) shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

5.8 EXTENSIONS OF TIME

Except as otherwise provided by statute, the Presiding Officer(s) may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R315-12-5.7. The Presiding Officer(s) may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

5.9 COMPUTATION OF TIME

Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure. No additional time shall be allowed for service by mail.

5.10 MOTIONS

All motions shall be filed a minimum of ten days before a scheduled hearing, unless otherwise allowed or required by the Presiding Officer(s). A memorandum in opposition to a motion may be filed within eight days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.

5.11 FILING AND COPIES OF SUBMISSIONS

The original of any motion, brief, request for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and, through counsel of record if applicable, to each party.

R315-12-6. Hearings.

6.1 CONDUCT OF HEARING

The Presiding Officer(s) shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony and cross-examination, and on the length of argument.

6.2 ORDER OF PRESENTATION

Unless otherwise directed by the Presiding Officer(s), the Petitioner shall present its case first, followed by the Executive Secretary, unless the Executive Secretary is the petitioner, and any other Parties. Rebuttal, if any, shall follow the same order.

R315-12-7. Orders.

7.1 PROPOSED ORDERS BY PARTIES

Unless otherwise directed by the Presiding Officer(s), each party may provide proposed orders for the Presiding Officer(s) within three days of the conclusion of the hearing.

7.2 DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS

(a) A Presiding Officer or Presiding Officers appointed for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order, shall prepare a draft order. A copy of the draft order shall be provided to all Parties.

(b) Any Party may, within 10 days of the date the draft order is mailed, delivered, or published, comment on the draft order. Such comments shall be limited to 15 pages, and shall cite to specific parts of the record which support the comments.

(c) The Board shall review the draft order, comments on the draft order, and those specific parts of the record cited by the Parties in any comments. The Board shall then determine whether to accept or modify the draft order, to remand the matter to an appointed Presiding Officer or Presiding Officers for further proceedings, or to act as Presiding Officers for further proceedings.

(d) The Board may modify this procedure with notice to all Parties.

7.3 CONTENT OF ORDERS

An order shall include the information required by Sections 63-46b-10 or 63-46b-5(1)(i) of UAPA.

R315-12-8. Stays of Orders.

8.1 STAY OF THE ORDER OF THE EXECUTIVE SECRETARY

(a) A Party seeking a Stay of the Order of the Executive Secretary shall file a motion with the Presiding Officer(s). A Stay, if granted, would suspend the effect of the challenged Order.

(b) The Presiding Officer(s) may order a stay of the Executive Secretary's Order if the Party seeking the Stay demonstrates that:

(1) The Party seeking the Stay will suffer irreparable harm unless the stay issues;

(2) The threatened injury to the Party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the Party restrained or enjoined;

(3) The Stay, if issued, would not be adverse to the public interest; and

(4) There is substantial likelihood that the Party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further evaluation by the Presiding Officer(s).

8.2 STAY OF THE ORDER OF THE PRESIDING OFFICER(S)

The Board as Presiding Officer may grant a stay of its order (or the Order of its appointed Presiding Officer) during the pendency of judicial review if the standards of 8.1(b) are met.

R315-12-9. Reconsideration.

No agency review under Section 63-46b-12 of UAPA is available. A Party may request reconsideration of an order of the Presiding Officer(s) as provided in Section 63-46b-13 of UAPA.

R315-12-10. Disqualification of Presiding Officer(s).

10.1 DISQUALIFICATION OF PRESIDING OFFICER

A member of the Board or other Presiding Officer shall disqualify him/herself from performing the functions of the Presiding Officer regarding any matter in which:

(a) He/she, or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(1) Is a party to the proceeding, or an officer, director, or trustee of a Party;

(2) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a Party concerning the matter in controversy;

(3) Knows that he/she has an financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a Party to the proceeding;

(4) Knows that he/she has any other interest that could be substantially affected by the outcome of the proceeding; or

(5) Is likely to be a material witness in the proceeding.

(b) The Presiding Officer is subject to disqualification under principles of due process and administrative law.

10.2 MOTIONS FOR DISQUALIFICATION

A motion for disqualification shall be made first to the Presiding Officer or Presiding Officers. If the Presiding Officer is or Presiding Officers are appointed, any determination of the Presiding Officer or Presiding Officers upon a motion for disqualification may be appealed to the Board.

R315-12-11. Other Forms of Address.

Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R315-12-3.

R315-12-12. Requests for Records.

Requests for records under the Utah Government Record Access and Management Act, Title 63, Chapter 2, Utah Code Ann., are not governed by R315. See R305-1, U.A.C.

KEY: hazardous waste
June 15, 1999 63-46b-4
Notice of Continuation August 24, 2006

R315. Environmental Quality, Solid and Hazardous Waste.
R315-13. Land Disposal Restrictions.
R315-13-1. Land Disposal Restrictions.

The requirements as found in 40 CFR 268, 2000 ed., as amended by 65 FR 67068, November 8, 2000; 66 FR 27266, May 16, 2001; 66 FR 58258, November 20, 2001; 67 FR 17119, April 9, 2002; and 67 FR 62618, October 7, 2002, are adopted and incorporated by reference including Appendices IV, VI, VII, VIII, IX, and XI, with the exclusion of Sections 268.5, 268.6, 268.42(b), and 268.44(a) - (g) and with the following exceptions:

(a) Substitute "Board" for all federal regulation references made to "Administrator" or "Regional Administrator" except for 40 CFR 268.40(b).

(b) All references made to "EPA Hazardous Waste Number" will include P999, and F999.

(c) Substitute Utah Code Annotated, Title 19, Chapter 6 for all references to RCRA.

KEY: hazardous waste
September 15, 2003 19-6-106
Notice of Continuation August 24, 2006 19-6-105

R315. Environmental Quality, Solid and Hazardous Waste.
R315-14. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.
R315-14-1. General Requirements.

(a) Purpose, Scope, and Applicability.

(1) The purpose of R315-14 is to establish minimum State standards which define the acceptable management of certain hazardous wastes and the acceptable practices for certain kinds of hazardous waste management facilities.

(2) R315-14 applies, in lieu of the requirements of R315-8 or R315-7, to the owners and operators of eligible hazardous waste management facilities.

R315-14-2. Recyclable Materials Used in a Manner Constituting Disposal.

(a) The requirements regarding recyclable materials used in a manner constituting disposal of 40 CFR 266.20 to 266.23, inclusive, 1994 ed., as amended by 59 FR 43496, August 24, 1994 and 59 FR 47982, September 19, 1994, are adopted and incorporated by reference.

R315-14-3. Reserved.

Reserved.

R315-14-4. Reserved.

Reserved.

R315-14-5. Recyclable Materials Utilized for Precious Metal Recovery.

The requirements regarding recyclable materials utilized for precious metal recovery of 40 CFR 266.70, 1996 ed., are adopted and incorporated by reference.

R315-14-6. Spent Lead-Acid Batteries Being Reclaimed.

The requirements regarding spent lead-acid batteries being reclaimed of 40 CFR 266.80, 1998 ed., as amended by 63 FR 71225, December 24, 1998, are adopted and incorporated by reference.

R315-14-7. Hazardous Waste Burned in Boilers and Industrial Furnaces.

The requirements as found in 40 CFR 266, Subpart H, 266.100 - 266.112, 2002 ed., are adopted and incorporated by reference.

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September 15, 2003 19-6-105
Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-50. Appendices.
R315-50-1. Instructions for Completion of Uniform Hazardous Waste Manifest.

The requirements of the Appendix to Part 262 of 40 CFR, Uniform Hazardous Waste Manifest, 1990 ed., are adopted and incorporated by reference with the following additional requirements:

(a) Generators and owners and operators shall complete the following additional items of the manifest form:

(1) Item D. Transporter's phone

Enter the phone number of the first transporter who will transport the waste.

(2) Item F. Transporter's phone

If applicable, enter the phone number of the second transporter who will transport the waste.

(3) Item H. Facility's phone

Enter the phone number of the facility designated to receive the waste listed on the manifest.

(4) Item I. Waste number

Enter the 4-digit EPA Hazardous Waste number assigned to the waste. If the waste is a mixture, include all EPA Hazardous Waste numbers for the wastes known to be present, regardless of the quantity of each individual waste component.

(5) Item J. Additional Descriptions for Materials Listed Above

If the DOT shipping description in item 11, a, b, c, d, of the manifest form contains only NOS or other general term, the hazardous waste constituent(s) must be provided here for each. The specific gravity is assumed to be one (1.00) unless otherwise indicated here.

(6) Item O. Transporter's phone

Refer to Item D

(7) Item Q. Transporter's phone

Refer to Item F

(8) Item R. Waste number

Refer to Item I

(9) Item S. Additional Descriptions for Materials Listed Above

Refer to Item J

R315-50-2. Recordkeeping Instructions.

The recordkeeping requirements of 40 CFR 264, Appendix I, and 265, Appendix I, 1993 ed., as amended by 59 FR 13891, March 24, 1994, are adopted and incorporated by reference.

R315-50-3. EPA Interim Primary Drinking Water Standards.

The interim primary drinking water standards of 40 CFR 265, Appendix III, 1991 ed., are adopted and incorporated by reference.

R315-50-4. Tests for Significance.

The requirements of 40 CFR 264 and 265, Appendix IV, 1991 ed., are adopted and incorporated by reference.

R315-50-5. Examples of Potentially Incompatible Waste.

The requirements of 40 CFR 264, Appendix V, and 265, Appendix V, 1991 ed., are adopted and incorporated by reference.

R315-50-6. Representative Sampling Methods.

The requirements of 40 CFR 261, Appendix I, 1991 ed., are adopted and incorporated by reference with the following exception:

Substitute "Board" for all references to "Agency".

R315-50-7. Toxicity Characteristic Leaching Procedure (TCLP).

The requirements of 40 CFR 261, Appendix II, 1993 ed., as amended by 58 FR 46040, August 31, 1993, are adopted and incorporated by reference.

R315-50-8. Chemical Analysis Test Methods.

The requirements of 40 CFR 261, Appendix III, 1993 ed., as amended by 58 FR 46040, August 31, 1993, are adopted and incorporated by reference.

R315-50-9. Basis for Listing Hazardous Wastes.

The requirements of 40 CFR 261, Appendix VII, 2002 ed., are adopted and incorporated by reference, with the following additions, excluding the constituents for which K064, K065, K066, K090, and K091 are listed:

1. F999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

R315-50-10. Hazardous Constituents.

The requirements of 40 CFR 261, Appendix VIII, 2002 ed., are adopted and incorporated by reference.

R315-50-11. Political Jurisdiction in Which Compliance with R315-8-2.9(a) Must be Demonstrated Within the State of Utah.

Beaver
Box Elder
Cache
Carbon
Daggett
Davis
Duchesne
Emery
Garfield
Grand
Iron
Juab
Kane
Millard
Morgan
Piute
Rich
Salt Lake
San Juan
Sanpete
Sevier
Summit
Tooele
Uintah
Utah
Wasatch
Washington
Wayne
Weber

R315-50-12. Reserved.

Reserved.

R315-50-13. Reserved.

Reserved.

R315-50-14. Ground Water Monitoring List.

The requirements of 40 CFR 264, Appendix IX, Groundwater Monitoring List, 1997 ed., are adopted and incorporated by reference.

R315-50-15. Reserved.

Reserved.

R315-50-16. Appendices to 40 CFR 266.

The requirements of 40 CFR 266, Appendices I - IX and XI - XIII, 2000 ed., are adopted and incorporated by reference.

R315-50-17. Compounds With Henry's Law Constant.

The requirements of Appendix VI of 40 CFR 265, Compounds with Henry's Law Constant, 1997 ed., as amended by 62 FR 64636, December 8, 1997, are adopted and incorporated by reference.

KEY: hazardous waste

September 15, 2003	**19-6-106**
Notice of Continuation August 24, 2006	**19-6-108**
	19-6-105

R315. Environmental Quality, Solid and Hazardous Waste.
R315-101. Cleanup Action and Risk-Based Closure Standards.
R315-101-1. Purpose, Applicability.

(a) Purpose. R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved. The procedures in this rule also provide for continued management of sites for which minimal risk-based standards cannot be met.

(b) Applicability.

(1) R315-101 is applicable to any responsible party involved in management of a site contaminated with hazardous waste or hazardous constituents. This rule does not apply to a site that has been or will be cleaned to background.

(2) In the event of a release of hazardous waste or material which, when released, becomes hazardous waste, these requirements apply if the responsible party fails to clean up all the released material and any residue or contaminated soil, water or other material resulting from the release as required by R315-9-3. If the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the requirements of R315-9-3 shall be considered met.

(3) The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of R315-7-14 and R315-8-7 prior to implementation of any activities described in R315-101. The requirements of R315-3-1.1(e)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If these risk exposure criteria are met, a request for a risk-based closure may be submitted to the Executive Secretary for review.

(4) If the risk present at the site is greater than the exposure limit as defined in R315-101-1(b)(2) or (3) or the Executive Secretary determines that ecological effects may be significant, then a risk-based closure will not be granted and appropriate management will be required and may include corrective action, post-closure care, monitoring, deed restrictions, and security of the site. For determinations of appropriate corrective action or management activities at a site, the following criteria shall be considered in order of importance:

(a) The impact or potential impact of the contamination on the human health;

(b) The impact or potential impact of the contamination on the environment;

(c) The technologies available for use in clean-up; and

(d) Economic considerations and cost-effectiveness of clean-up options.

R315-101-2. Stabilization.

The responsible party must immediately take appropriate action to stabilize the site either through source removal or source control. After the responsible party has attempted to complete the requirements of R315-9 and the Executive Secretary determines that additional work is needed to stabilize the site, the Executive Secretary will notify the responsible party that additional work is necessary and provide the responsible party with objectives to be addressed in developing a work plan to further stabilize the site. The work plan shall be submitted to the Executive Secretary for review and approval within fifteen days of receiving notification that additional work will be necessary to complete the emergency actions required by R315-9. Work plans shall be of a scope commensurate with the work to be performed and site-specific characteristics. This work plan shall include a description of the interim measure and how it will meet the criteria of source removal or source control. The implementation of the work plan shall be according to the schedule contained within the approved plan. All interim measures shall be at the expense of the party responsible for the site. If the party responsible for the site fails to take the measures required for stabilizing the site, the Executive Secretary may request the Executive Director of the Department to take abatement and cost recovery actions as provided in Section 19-6-301, et seq., Utah Hazardous Substances Mitigation Act.

R315-101-3. Principle of Non-degradation.

When closing or managing a contaminated site, the responsible party shall not allow levels of contamination in groundwater, surface water, soils, and air to increase beyond the existing levels of contamination at a site when site management commences. The responsible party will demonstrate compliance with this policy by submitting appropriate monitoring data or other data as may be required by the Executive Secretary. If at any time the level of contamination increases, the responsible party shall take immediate corrective action to prevent further degradation of any medium.

R315-101-4. Site Characterization.

The following information shall be collected to characterize the site, and define site boundaries and Area(s) of Contamination:

(a) A legal description of the site;

(b) Historical land use and ownership of the site;

(c) Topographical map(s) of sufficient detail, scale, and accuracy to depict and locate all past and current physical structures including all building(s) and waste activities at the site;

(d) Information and maps of sufficient detail, scale, and accuracy to describe regional, local, and site geology, surface water, and hydrogeological conditions;

(e) An inventory of all current and past wastestreams managed at the site, including process descriptions and suspected contamination source information;

(f) Background levels of suspected hazardous constituents based on the inventory as determined in R315-101-4(e) in media of concern, e.g. sediments, soil, groundwater, surface water, and air which are representative of the site; and

(g) Location and boundaries of all Area(s) of Contamination, including concentrations, types and extent of hazardous constituents. Media to be sampled may include sediments, soil, groundwater, surface water, and air, as applicable.

R315-101-5. Health Evaluation Criteria, Risk Assessment.

5.1 REQUIRED STUDY

(a) When conducting the risk assessment the responsible party will use all applicable site characterization data and shall consider the following parameters when conducting the risk assessment:

(1) Identification, concentration, and distribution of all suspected hazardous constituents identified in R315-101-4(e);

(2) All area(s) of contamination at the site;

(3) Fate of contaminants and pathways of contaminant transport; and

(4) Potentially exposed populations.

5.2 CHARACTERIZATION AND EVALUATION OF RISK

(a) The responsible party shall conduct a risk assessment which includes the following:

(1) The concentration term "C" for each medium for each hazardous constituent identified in R315-101-5.1(a)(1);

(2) Evaluation of the fate of contaminants and of all pathways of contaminant transport identified in R315-101-5.1(a)(3);

(3) Exposure assessment identifying the RME for all exposure pathways, intakes, and identified constituents;

(4) Current toxicity information for carcinogenic and noncarcinogenic effects;

(5) Risk characterization identifying carcinogenic risk, individual and multiple substances, and noncarcinogenic hazardous index, individual and multiple substances;

(6) An ecological evaluation which provides for terrestrial and aquatic processes; and

(7) Current toxicity information for all the constituents and biological processes relevant to the ecological evaluation.

(b) The risk assessment shall be conducted using one or both of the standard exposure scenarios listed below, as needed to determine site management options:

(1) Residential. This exposure scenario includes ingestion of water (must include surface water and ground water regardless of water quality), ingestion of soil and dust, ingestion of contaminated and potentially contaminated food, inhalation of contaminants, dermal contact with chemicals in soil, and dermal contact with chemicals in water for a human being ages zero through 70 years old using the equations and default variable values found in the Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual Supplemental Guidance, "Standard Default Exposure Factors", Interim Final, OSWER Directive 9285.6-03, March 25, 1991 or most recent edition;

(2) Actual land use conditions or potential land use conditions based upon applicable zoning and future land use planning considerations, if potential land use conditions offer a more protective exposure scenario than actual land use conditions. This exposure scenario involves an assessment based on actual site conditions using standard default variable values. The potential land use exposure scenario should include a conceptual model including current site conditions, expected future conditions based upon site-specific physical and chemical information, and the assumption that contaminated media will not have undergone any remedial engineering.

5.3 DATA PRESENTATION

(a) A risk assessment report shall be submitted to the Executive Secretary and must include at a minimum the following:

(1) An executive summary;

(2) An overview of the site and the areas of contamination;

(3) A site characterization report which includes:

(i) Maps of sufficient detail and accuracy to depict areas of contamination, topography, geology, and groundwater contours or potentiometric surface;

(ii) Site and regional geological and hydrological descriptions;

(iii) A detailed discussion of areas of contamination;

(iv) Background levels of hazardous constituents including details of statistical methods used to determine background; and

(v) Descriptions of releases of hazardous constituents and expected extent of migration from the area of contamination.

(4) Identification and concentration of hazardous constituents identified in R315-101-5.1(a)(1). A sampling and analysis plan shall be prepared and utilized for the collection of all data. This plan shall be developed using procedures and methods outlined in R315-50-6 and the most current version of "SW-846, Test Methods for Evaluating Solid Waste." It shall contain a summary outlining data quality objectives, completed analytical request forms for all analysis performed, dry weight equivalents, sampling location identification and justification, standard operating procedures used for data collection, all statistical analysis performed, quality assurance and quality control plans (QA/QC plan) and QA/QC results, instrument calibration results, and analytical methods including constituent detection limits;

(5) Exposure assessment identifying exposure levels for all exposure pathways identified in R315-101-5.2(a)(3). If fate and transport models are used, the users manual, model theory, computer software for the model, installation verification data set for the model and parametric analysis of the input parameters must be provided upon request of the Executive Secretary;

(6) Identification of toxicity information gathered for all identified hazardous constituents for carcinogenic, slope factors and weight-of-evidence classification, noncarcinogenic effects, chronic reference doses (RfDs) and critical effects associated with RfDs from, in order of preference, the Integrated Risk Information System (IRIS), Health Effects Assessment Summary Tables (HEAST), Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles, Environmental Criteria and Assessment Office (ECAO), or other scientifically accepted listings. The source and date of the toxicological information must be identified and be acceptable to the Executive Secretary;

(7) The risk characterization identifying carcinogenic risk, individual and multiple substances, noncarcinogenic hazardous index, individual and multiple substances, chronic hazard quotient, subchronic hazard quotient, uncertainties, and a tabulation of all risk characterization data presented in a format approved by the Executive Secretary; and

(8) Unless justification is provided to the Executive Secretary, and a waiver of this requirement is granted by the Executive Secretary in writing, an ecological assessment of the site which contains at least the following:

(i) An inventory of the current biological community;

(ii) Estimates of ecological effects based on a subset of ecological endpoints;

(iii) The magnitude and variation of toxic effects; and

(iv) Identification of extent of effects, specifically from the presence of hazardous waste.

(b) If the risk assessment report does not contain all required information of sufficient quality and detail, the Executive Secretary will notify the responsible party in writing of the deficiencies and require resubmittal of the report in a designated time frame.

(c) If the risk assessment report contains all required information of sufficient quality and detail, the Executive Secretary will approve the risk assessment report in writing.

R315-101-6. Risk Management: Site Management Plan and Closure Equivalency.

(a) A site management plan which is supported by the findings in the approved risk assessment report shall be submitted to the Executive Secretary within 60 days of approval of the risk assessment report. This plan may be submitted along with the risk assessment report and must include a schedule for implementation.

(b) The Executive Secretary shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Executive Secretary finds that the site management plan is not adequate for protection of human health and the environment, the responsible party shall then submit a revised site management plan addressing the comments of the Executive Secretary within an appropriate time frame as specified by the Executive Secretary. The Executive Secretary shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Executive Secretary shall follow the requirements of R315-101-

7 prior to issuance of final approval. The approved site management plan shall be implemented according to the approved schedule. If the Executive Secretary rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Executive Secretary in a statement of disapproval.

(c)(1) The site management plan may contain a no further action option only if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8);

(2) The requirements of R315-3-1.1(e)(5) and (6) shall be deemed met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of "less than or equal to one" for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Executive Secretary determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). If this risk exposure criterion is met, a request for a risk-based closure may be submitted; or

(3) If the risk present at the site is greater than or equal to 1×10^{-6} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based upon the exposure assessment conducted in accordance with R315-101-5.2(b)(1), or the Executive Secretary determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), a risk-based closure will not be granted. The responsible party shall then submit a site management plan fulfilling the requirements of R315-101-6(d) or (e) as applicable.

(d) If the level of risk present at the site is less than 1×10^{-4} for carcinogens and a hazard index is "less than or equal to one" for the risk assessment conducted in accordance with R315-101-5.2(b)(2) but greater than or equal to 1×10^{-6} for carcinogens or a hazard index is greater than one for a risk assessment conducted in accordance with R315-101-5.2(b)(1) or the Executive Secretary determines that ecological effects may be significant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the site management plan may contain, but is not required to contain, procedures for corrective action. The site management plan shall contain appropriate management activities e.g., monitoring, deed notations, site security, or post-closure care, as determined on a case-by-case basis in accordance with criteria identified in R315-101-1(b)(4).

(e) The site management plan must contain procedures for corrective action if the level of risk present at the site is greater than or equal to 1×10^{-4} for carcinogens or a Hazard Index of "greater than one" for non-carcinogens based on the approved assessment conducted in accordance with R315-101-5.2(b)(2) or the Executive Secretary concludes that corrective action is required to mitigate ecological effects based on the approved assessment conducted in accordance with R315-101-5.3(a)(8). For determination of appropriate corrective action the criteria identified in R315-101-1(b)(4) shall be considered.

(f) If hazardous constituents are present only in groundwater at the site, and if the hazardous constituents are listed in Table 1 of R315-8-6.5, the Maximum Concentration Levels listed in Table 1 can be presented in lieu of health risk estimates for those constituents. The RME for Table 1 constituents must be determined in accordance with approved site characterization methods listed in R315-101-4.

R315-101-7. Public Participation.

(a) The Executive Secretary may provide for public participation in all phases of the cleanup action process, as defined in R315-101-4 through R315-101-6. As directed by the Executive Secretary and based on the circumstances and level of public interest at the site, pertinent work plans shall describe how information will be made available to the public through, for example, fact sheets or information repositories and, where appropriate, contain proposed time frames for public input through, for example, public meetings, hearings, or comment periods. The Executive Secretary shall also provide public notice, a public comment period, and public hearing(s) for the site management plan in accordance with R315-4-1.10 through R315-4-1.12 and R315-4-1.17.

R315-101-8. Cleanup/Management Action.

(a) Upon approval of the site management plan by the Executive Secretary, all remedial activities at the site shall proceed according to the schedule established in the approved site management plan using the method(s) described therein.

(b) Cleanup/Management Report. The Cleanup/Management Report shall detail remediation, treatment, and monitoring activities undertaken at the site by the responsible party as required by the approved site management plan. If the Cleanup/Management Report provides analytical data as evidence that levels of contamination at the site meet the requirements established in the site management plan for a risk-based closure or no further action as defined in R315-101-6(c)(2), the responsible party shall submit a certification of completion as outlined in R315-101-8(c), or request risk-based closure as outlined in R315-3-1.1(e)(6), whichever is applicable.

(c) Certification of Completion. Within 60 days of the completion of all activities documented in the Cleanup/Management Report, a Certification of Completion of Cleanup/Management Action shall be submitted to the Executive Secretary by registered mail. The certification of completion shall state the site has been managed in accordance with the specifications in the approved Site Management Plan and shall be signed by the responsible party and by an independent Utah registered professional engineer.

(d) Oversight.

(1) The Executive Secretary or his representatives shall have access to the site as described in R315-2-12 and at all times when activity pursuant to R315-101 is taking place. The Executive Secretary or his representatives may take samples or make records of any visit to the site by photographic, electronic, videotape or any other reasonable means.

(2) The Executive Secretary shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(3) The responsible party shall notify the Executive Secretary at least seven days prior to any sampling event or remediation activity.

KEY: hazardous waste
September 20, 2001 19-6-105
Notice of Continuation August 24, 2006 19-6-106

R317. Environmental Quality, Water Quality.
R317-7. Underground Injection Control (UIC) Program.
R317-7-0. Effective Date and Applicability of Rules.

The effective date of these rules is January 19, 1983 (40 C.F.R. 147.2250). Class II wells are administered by the Division of Oil, Gas and Mining, whose primacy became effective October 8, 1982 (40 C.F.R. 147.2251).

R317-7-1. Incorporation By Reference.

1.1 Underground Injection Control Program - 40 C.F.R. 144.7, 144.13(d), 144.14, 144.16, 144.23(c), 144.32, 144.34, 144.36, 144.38, 144.39, 144.40, 144.41, 144.51(a)-(o) and (q), 144.52, 144.53, 144.54, 144.55, 144.60, 144.61, 144.62, 144.63, 144.64, 144.65, 144.66, 144.70, and 144.87, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary".

B. "one quarter mile" is hereby replaced with "two miles".

1.2 Underground Injection Control Program - Criteria and Standards - 40 C.F.R. 146.4, 146.6, 146.7, 146.8, 146.12, 146.13(d), 146.14, 146.32, 146.34, 146.61,146.62, 146.63, 146.64, 146.65, 146.66, 146.67, 146.68, 146.69, 146.70, 146.71, 146.72, and 146.73, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary";

B. "one quarter (1/4) mile" and "one-fourth (1/4) mile" are each hereby replaced with "two miles".

1.3 Hazardous Waste Injection Restrictions - 40 C.F.R. Part 148, July 1, 2003 ed., is adopted and incorporated by reference with the exception that "Director" is hereby replaced with "Executive Secretary".

1.4 Identification and Listing of Hazardous Waste - 40 C.F.R. Part 261, July 1, 2003 ed., is adopted and incorporated by reference.

1.5 National Primary Drinking Water Regulations - 40 C.F.R. Part 141, July 1, 2003 ed., is adopted and incorporated by reference.

1.6 Guidelines Establishing Test Procedures for the Analysis of Pollutants - 40 C.F.R. Part 136 Table 1B, July 1, 2003 ed., is adopted and incorporated by reference.

1.7 Nuclear Regulatory Commission - Standards for Protection Against Radiation - 10 C.F.R. Part 20 Appendix B, Table 2 Column 2, January 1, 2003 ed., is adopted and incorporated by reference.

1.8 Procedures for Decision Making - 40 C.F.R. 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d) and (e); 124.8; 124.10(a)(1)ii, iii, and (a)(1)(V); 124.10(b), (c), (d), and (e); 124.11; 124.12(a); and 124.17(a) and (c), July 1, 2003 ed., are adopted and incorporated by reference with the exception that "Director" is hereby replaced by "Executive Secretary".

R317-7-2. Definitions.

2.1 "Abandoned Well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

2.2 "Application" means standard forms for applying for a permit, including any additions, revisions or modifications.

2.3 "Aquifer" means a geologic formation or any part thereof that is capable of yielding significant water to a well or spring.

2.4 "Area of Review" means the zone of endangering influence or fixed area radius determined in accordance with the provisions of 40 C.F.R. 146.6.

2.5 "Background Data" means the constituents or parameters and the concentrations or measurements which describe water quality and water quality variability prior to surface or subsurface discharge.

2.6 "Barrel" means 42 (U.S.) gallons at 60 degrees F and atmospheric pressure.

2.7 "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

2.8 "Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

2.9 "Catastrophic Collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

2.10 "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

2.11 "Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

2.12 "Confining Bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

2.13 "Confining Zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

2.14 "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

2.15 "Conventional Mine" means an open pit or underground excavation for the production of minerals.

2.16 "Disposal Well" means a well used for the disposal of fluids into a subsurface stratum.

2.17 "Drilling Mud" means mud of not less than 36 viscosity (A.P.I. Full Funnel Method) and a weight of not less than nine pounds per gallon.

2.18 "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

2.19 "Exempted Aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 40 C.F.R. 144.7.

2.20 "Existing Injection Well" means an "injection well" other than a "new injection well."

2.21 "Experimental Technology" means a technology which has not been proven feasible under the conditions in which it is being tested.

2.22 "Fault" means a surface or zone of rock fracture along which there has been a displacement.

2.23 "Flow Rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

2.24 "Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

2.25 "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

2.26 "Formation Fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

2.27 "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261.

2.28 "Groundwater" means water below the ground surface in a zone of saturation.

2.29 "Ground water protection area" refers to the drinking

water source protection zones for ground water sources delineated by the Utah Division of Drinking Water according to Utah Administrative Code R309-600 - Drinking Water Source Protection For Ground-Water Sources.

2.30 "Hazardous Waste" means a hazardous waste as defined in R315-2-3.

2.31 "Hazardous Waste Management Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

2.32 "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

2.33 "Injection Well" means a well into which fluids are being injected for subsurface emplacement of the fluids.

2.34 "Injection Zone" means a geological "formation," group of formations, or part of a formation receiving fluids through a well.

2.35 "Large underground domestic wastewater disposal system" means a large underground domestic wastewater disposal system (as defined in R317-1-1.16) for emplacing treated domestic wastewater into the subsurface and which is designed for a capacity of greater than 5,000 gallons per day

2.36 "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

2.37 "Monitoring Well" means a well used to measure groundwater levels and to obtain water samples for water quality analysis.

2.38 "New Injection Well" means an injection well which began injection after January 19, 1983.

2.39 "Packer" means a device lowered into a well to produce a fluid-tight seal within the casing.

2.40 "Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

2.41 "Plugging Record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

2.42 "Point of injection" means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box - the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

2.43 "Pressure" means the total load or force per unit area acting on a surface.

2.44 "Project" means a group of wells in a single operation.

2.45 "Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act Rules (UAC R156-22).

2.46 "Professional Geologist" means any person qualified to practice geology before the public in the state of Utah and professionally registered as required under the Professional Geologist Licensing Act Rules (UAC R156-76).

2.47 "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 C.F.R. Part 20, Appendix B, Table II Column 2.

2.48 "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

2.49 "Septic system" means a "well" that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

2.50 "Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

2.51 "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

2.52 "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

2.53 "Surface Casing" means the first string of well casing to be installed in the well.

2.54 "Total Dissolved Solids (TDS)" means the total residue (filterable) as determined by use of the method specified in 40 C.F.R. Part 136 Table 1B.

2.55 "Transferee" means the owner or operator receiving ownership and/or operational control of the well.

2.56 "Transferor" means the owner or operator transferring ownership and/or operational control of the well.

2.57 "Underground Injection" means a "well injection".

2.58 "Underground Sources of Drinking Water (USDW)" means an aquifer or its portion which:

A. Supplies any public water system, or which contains a sufficient quantity of ground water to supply a public water system; and

1. currently supplies drinking water for human consumption; or

2. contains fewer than 10,000 mg/l total dissolved solids (TDS); and

B. is not an exempted aquifer. (See Section 7-4).

2.59 "Well" means a bored, drilled or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system.

2.60 "Well Injection" means the subsurface emplacement of fluids through a well.

2.61 "Well Monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

2.62 "Well Plug" means a watertight and gas-tight seal installed in a borehole or well to prevent movement of fluids.

2.63 "Well Stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes:

(1) surging;

(2) jetting;

(3) blasting;

(4) acidizing; and
(5) hydraulic fracturing.

R317-7-3. Classification of Injection Wells.

Injection wells are classified as follows:

3.1 Class I

A. Hazardous Waste Injection Wells: wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water;

B. Nonhazardous Injection Wells: other industrial and municipal waste disposal wells which inject nonhazardous fluids beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water; this category includes disposal wells operated in conjunction with uranium mining activities.

C. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within two miles of the well bore.

3.2 Class II. Wells which inject fluids:

A. which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

B. for enhanced recovery of oil or natural gas; and

C. for storage of hydrocarbons which are liquid at standard temperature and pressure.

Class II injection wells are regulated by the Division of Oil, Gas and Mining under Oil and Gas Conservation General Rules, R649-5.

3.3 Class III. Wells which inject for extraction of minerals, including:

A. mining of sulfur by the Frasch process;

B. in situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V; and

C. solution mining of salts or potash.

3.4 Class IV

A. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which, within two miles of the well, contains an underground source of drinking water;

B. wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which, within two miles of the well, contains an underground source of drinking water;

C. wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under Section 7-3.1(A) or 7-3.4(A) and (B) of these rules (e.g. wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted).

3.5 Class V. Injection wells not included in Classes I, II, III, or IV. Class V wells include:

A. air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

B. large capacity cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive untreated sanitary wastes, containing human excreta, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have a design flow rate of less than or equal to 5,000 gallons per day;

C. cooling water return flow wells used to inject water previously used for cooling;

D. drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

E. dry wells used for the injection of wastes into a subsurface formation;

F. recharge wells used to replenish the water in an aquifer;

G. salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

H. sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, whether what is injected is radioactive waste or not;

I. large underground domestic wastewater disposal systems (as defined in R317-1-1.16) used to inject effluent from a domestic wastewater treatment system associated with a multiple family dwelling, business establishment, community, or regional business establishment. The UIC requirements do not apply to single family residential onsite wastewater systems (as defined in R317-1-1.13), nor to non-residential onsite wastewater systems which are used solely for the disposal of treated domestic waste and have a design flow rate of less than or equal to 5,000 gallons per day. Any subsurface fluid distribution system or other type of injection well designed for any flow rate and used to dispose of industrial wastewater is not an underground wastewater disposal system as defined by R317-1-1.32.

J. subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

K. stopes leaching, geothermal and experimental wells;

L. brine disposal wells for halogen recovery processes;

M. injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power; and

N. injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

O. motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (see 40 CFR Part 141 and Utah Primary Drinking Water Standards R309-200-5). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

R317-7-4. Identification of USDW'S and Exempted Aquifers.

The Executive Secretary shall identify USDW's and exempt aquifers following the procedures and based on the requirements outlined in 40 C.F.R. 144.7 and 40 C.F.R. 146.4.

R317-7-5. Prohibition of Unauthorized Injection.

5.1 Any underground injection is prohibited except as authorized by permit or as allowed under these rules.

5.2 No authorization by permit or by these rules for underground injection shall be construed to authorize or permit any underground injection which endangers a drinking water

source.

5.3 Underground injections are prohibited which would allow movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a violation of any primary drinking water regulation (40 C.F.R. Part 141 and Utah Primary Drinking Water Standards R309-200-5), or which may adversely affect the health of persons. Underground injections shall not be authorized if they may cause a violation of any ground water quality rules that may be promulgated by the Utah Water Quality Board. Any applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

5.4 For Class I and III wells, if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Executive Secretary shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including closure of the injection well, as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit or the permit may be terminated, or appropriate enforcement action may be taken if the permit has been violated.

5.5 For Class V wells, if at any time the Executive Secretary determines that a Class V well may cause a violation of primary drinking water rules under R309-200, the Executive Secretary shall:

A. require the injector to obtain an individual permit;

B. order the injector to take such actions, including closure of the injection well, as may be necessary to prevent the violation; or

C. take appropriate enforcement action.

5.6 Whenever the Executive Secretary determines that a Class V well may be otherwise adversely affecting the health of persons, the Executive Secretary may require such actions as may be necessary to prevent the adverse effect.

5.7 Class IV Wells

A. Prohibitions. The construction, operation or maintenance of any Class IV well is prohibited except as specified in 40 C.F.R. 144.13 (c) and 144.23(c) as limited by the definition of Class IV wells in Section 7-3.4 of these rules.

B. Plugging and abandonment requirements. Prior to abandoning a Class IV well, the owner or operator shall close the well in a manner acceptable to the Executive Secretary. At least 30 days prior to abandoning a Class IV well, the owner or operator shall notify the Executive Secretary of the intent to abandon the well.

5.8 Notwithstanding any other provision of this section, the Executive Secretary may take emergency action upon receipt of information that a contaminant which is present in, or is likely to enter a public water system, may present an imminent and substantial endangerment to the health of persons.

5.9 Records. The Executive Secretary may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules.

R317-7-6. Permit and Compliance Requirements - New and Existing Wells.

6.1 The owner or operator of any new injection well is required to obtain a permit from the Executive Secretary prior to construction unless excepted by R317-7-6.3. Compliance with construction plans and standards is required prior to commencing injection operations. Changes in construction plans require approval of the Executive Secretary.

6.2 Owners or operators of existing underground injection wells are required to obtain a permit from the Executive Secretary unless specifically excepted by Section 7-6.3 of these rules.

6.3

A. Existing and new Class V injection wells are authorized by rule, subject to the conditions in Section 7-6.5 of these rules.

B. Well authorization under this Section 7-6.3 expires upon the effective date of a permit issued in accordance with these rules or upon proper closure of the well.

C. An owner or operator of a well which is authorized by rule under this Section 7-6.3 is prohibited from injecting into the well:

1. Upon the effective date of a permit denial.

2. Upon failure to submit a permit application in a timely manner if requested by the Executive Secretary under Section 7-6.4 of these rules.

3. Upon failure to submit inventory information in a timely manner in accordance with Section 7-6.4(C) of these rules.

6.4

A. The Executive Secretary may require any owner or operator of a Class I, III or V well authorized under Section 7-6.3 to apply for and obtain an individual or area permit. Cases where permits may be required include:

1. The injection well is not in compliance with the applicable rules.

2. The injection well is not or no longer is within the category of wells and types of well operations authorized by Section 7-6.3.

3. Protection of an USDW.

B. Any owner or operator authorized under Section 7-6.3 may request a permit and hence be excluded from coverage under Section 7-6.3.

C. Owners or operators of all injection wells regulated by Section 7-6.3 shall submit the following inventory information to the Executive Secretary:

1. facility name and location;

2. name and address of legal contact;

3. ownership of facility;

4. nature and type of injection wells; and

5. operating status of injection wells.

Inventory information shall be submitted no later than January 19, 1984 for existing injection wells and before injection begins for new injection wells.

6.5 Additional requirements for large-capacity cesspools and motor vehicle waste disposal wells (see Class V well descriptions in Sections 7-3.5(B) and 7-3.5(O), respectively).

A. All existing large-capacity cesspools (operational or under construction by April 5, 2000) must close by April 5, 2005. See closure requirements in Section 7-6.6.

B. All new or converted large-capacity cesspools (construction not started before April 5, 2000) are prohibited.

C. All existing motor vehicle waste disposal wells (operational or under construction by April 5, 2000) must either be closed or their owners or operators must obtain a UIC permit.

1. For those wells located within a ground water protection area as designated by the Utah Division of Drinking Water (DDW), closure or permit application submittal must take place within one year of completion of DDW's ground water protection area assessment for the pertinent area.

2. All motor vehicle waste disposal wells statewide located outside a ground water protection area must either be closed or their owners or operators must submit a UIC permit application by January 1, 2007.

3. If well closure is the option chosen, the closure requirements in Section 7-6.6 must be followed. The closure deadline may be extended by the Executive Secretary for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

4. If obtaining a UIC permit is the option chosen, Utah Drinking Water Maximum Contaminant Levels (MCL's), Utah Ground Water Quality Standards, and EPA Adult Lifetime Health Advisories must be met at the point of injection while the permit application is under review. These standards must also be met at the point of injection under the terms of the permit, when issued. Utah Ground Water Protection Levels may be required to be met at downgradient ground water monitoring wells, if required to be installed. Such a permit may require pretreatment of the wastewater, and will require adherence to best management practices and monitoring of the quality of the injectate and any sludge generated.

D. All new or converted motor vehicle waste disposal wells (construction not started before April 5, 2000) are prohibited.

6.6 Class V well plugging and abandonment requirements.

A. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 141 or Utah Primary Drinking Water Standards R309-200-5, or may otherwise adversely affect the health of persons.

B. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

C. The owner or operator must notify the Executive Secretary of intent to close the well at least 30 days prior to closure.

6.7 Conversion of motor vehicle waste disposal wells. In limited cases, the Executive Secretary may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

6.8 Time for Application for Permit. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit a complete application to the Executive Secretary in accordance with Section 7-9 a reasonable time before construction is expected to begin, except for new wells covered by an existing area permit.

6.9 All applications for a Utah UIC permit, including any required Technical Report that addresses the technical requirements of R317-7-10 or R317-7-11, any technical information necessary for the adequate evaluation of any permit application, or any permit renewal applications and Technical Reports that are significantly different from the original permit application, must be prepared by or under the direction, and bear the seal, of a professional geologist or professional engineer.

R317-7-7. Area Permits.

A. The Executive Secretary may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

1. described and identified by location in permit application, if they are existing wells, except that the Executive Secretary may accept a single description of wells with substantially the same characteristics;

2. within the same well field, facility site, reservoir, project, or similar unit in the State;

3. operated by a single owner or operator; and

4. used to inject other than hazardous waste.

B. Area permits shall specify:

1. the area within which underground injections are authorized; and

2. the requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon injection wells within the permit area provided that:

1. the permittee notifies the Executive Secretary at such time as the permit requires, when and where the new well has been or will be located;

2. the additional well meets the area permit criteria; and

3. the cumulative effects of drilling and operation of additional injection wells are considered by the Executive Secretary during evaluation of the area permit application and are acceptable to the Executive Secretary.

D. If the Executive Secretary determines that any additional well does not meet the area permit requirements, the Executive Secretary may modify or terminate the permit or take appropriate enforcement action.

E. If the Executive Secretary determines the cumulative effects are unacceptable, the permit may be modified.

F. The requirements of R317-7-6.9 apply to area permits.

R317-7-8. Emergency Permits.

A. Notwithstanding any provision in this Part 7, the Executive Secretary is authorized to issue emergency permits for specific underground injections provided the conditions and requirements of 40 C.F.R. 144.34 are met.

B. The requirements of R317-7-6.9 apply to emergency permits.

R317-7-9. Permitting Procedures and Conditions.

9.1 Application for a Permit

A. Any person who is required to have a permit shall complete, sign and submit an application to the Executive Secretary.

B. When the owner and operator are different, it is the operator's duty to obtain a permit.

C. The application must be complete before the permit is issued.

D. All applicants shall provide the following information:

1. activities conducted by the applicant which require a permit;

2. name, mailing address and location of facility;

3. up to four Standard Industrial Code (SIC) codes which best reflect the principal products or services provided;

4. operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;

5. whether the facility is located on Indian lands;

6. list of State and Federal environmental permits or construction approvals received or applied for and other relevant environmental permits;

7. topographic map (or other map if the topographic map is unavailable) extending one mile beyond the property boundary; depicting the facility and its intake and discharge structures, any hazardous waste, treatment, storage and disposal facilities; each injection well; and wells, springs, surface water bodies, and drinking water wells listed in public records or otherwise known;

8. a brief description of the nature of the business;

9. a map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show a number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, (surface and

subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

10. a tabulation of data on all wells within the area of review which penetrates into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, any available water quality data, and any additional information the Executive Secretary may require;

11. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

12. maps and cross sections detailing the geologic structure and lithology of the local area;

13. generalized maps and cross sections illustrating the regional geologic and hydrologic setting;

14. proposed operating data:

(a) average and maximum daily rate and volume of the fluid to be injected;

(b) average and maximum injection pressure; and

(c) source and an appropriate analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

15. proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

16. proposed stimulation program;

17. proposed injection procedure;

18. schematic or other appropriate drawings of the surface and subsurface construction details of the system;

19. contingency plans to cope with all shut-ins or well failures to prevent migration of fluids into any underground source of drinking water;

20. plans (including maps) for meeting the monitoring requirements;

21. for wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken;

22. construction procedures, as follows:

(a) For Class I Nonhazardous Wells: a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with Section 7-10.1(A) or 40 C.F.R. 146.12;

(b) For Class I Hazardous Waste Wells: cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program, which comply with 40 C.F.R. 146.65 and 146.66;

(c) For Class III wells: cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with section 7-10.1(B) or 40 C.F.R. 146.32.

23. A plan for plugging and abandoning the well, as follows:

(a) Class I Nonhazardous Well plans shall include information required by 40 C.F.R. 146.14(c) and Section 7-10.5 of these rules;

(b) Class I Hazardous Waste Well plans shall include information required by 40 C.F.R. 146.71(a)(4) and 146.72(a);

(c) Class III well plans shall include information required by 40 C.F.R. 146.34(c) and Section 7-10.5 of these rules.

24. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well. Class I Hazardous Waste wells shall also demonstrate financial responsibility pursuant to 40 C.F.R. 144.60 through 144.70;

25. such other information as may be required by the Executive Secretary.

9.2 Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years from the date of permit approval.

9.3 Permit applications and reports required under these regulations shall be signed in accordance with 40 C.F.R. Section 144.32.

9.4 Permit Provisions, Conditions and Schedules of Compliance.

Any permit issued by the Executive Secretary is subject to the conditions and requirements and shall be issued in accordance with the procedures outlined in 40 C.F.R. 144.51 (a)-(o) and (q), 144.52, 144.53, 144.54, 144.55 and 146.7, and 40 C.F.R. 124.3(a), 124.5(a),(c),(d) and (f), 124.6(a),(c),(d) and (e), 124.8, 124.10(a)(1)ii, and iii, (a)(1)(v), 124.10(b),(c),(d) and (e), 124.11, 124.12(a) and 124.17(a) and (c). The permit may specify schedules of compliance which require compliance not later than three years after the effective date of the permit.

9.5 Duration of Permits. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed ten years. Permits for Class III wells shall be issued for a period up to the operating life of the facility. Each issued Class III well permit shall be reviewed by the Executive Secretary at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

9.6 Transfer, Modification, and Termination. Permits may be transferred, modified, revoked, reissued, or terminated by the Executive Secretary under the conditions and following the procedures outlined in 40 C.F.R. 144.36, 144.38, 144.39, 144.40, and 144.41.

9.7 Confidentiality of Information. The following information when submitted as required by these rules cannot be claimed confidential:

A. name and address of permit applicant or permittee; and

B. information which deals with the existence, absence or level of contaminants in drinking water.

9.8 Waivers of Requirements

A. The Executive Secretary may waive the requirements of these rules only under the conditions and circumstances outlined in 40 C.F.R. Section 144.16.

B. The "two mile" distance provisions in Sections 7-3.1(B), 7-3.4, 7-10.1(A)(1), and 7-11 of these rules may be reduced by the Board on a case-by-case basis to less than two miles but in no event to less than 1/4 mile upon a finding by the Board that the distance reduction will not pose a threat to any USDW. The burden shall be on the applicant to demonstrate that hydrogeologic conditions, ground water quality in the area, and other environmental studies and information support the finding.

R317-7-10. Technical Requirements for Class I Nonhazardous and Class III Wells.

10.1 Construction Requirements

A. Class I Nonhazardous Well Construction Requirements

1. All Class I Nonhazardous wells as defined in Section 7-3.1(B) shall be sited so they inject beneath the lowermost formation containing, within two miles of the well bore, an USDW.

2. All Class I Nonhazardous wells shall be cased and cemented to prevent the movement of fluids into or between USDW's. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements the following factors shall be

considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluid, formation fluids, and temperatures;

f. lithology of injection and confining intervals; and

g. type or grade of cement.

3. All Class I Nonhazardous injection wells (except for municipal wells injecting noncorrosive wastes) shall inject through tubing with a packer set immediately above the injection zone or tubing with an approved fluid seal. Alternatives may be used with the written approval of the Executive Secretary if they provide a comparable level of protection.

The following factors shall be considered in determining and specifying requirements for tubing, packer or alternatives:

a. depth of setting;

b. characteristics of injected fluid;

c. injection pressure;

d. annular pressure;

e. rate, temperature and volume of injected fluid; and

f. size of casing.

4. Appropriate logs and other tests shall be conducted during the drilling and construction of new wells and a descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Executive Secretary. At a minimum, such logs and tests shall include:

a. deviation checks on holes constructed by drilling a pilot hole, and then enlarging the pilot hole;

b. Such other logs and tests as may be required by the Executive Secretary. In determining which logs and tests shall be required, the following shall be considered for use in the following situations:

(1) for surface casing intended to protect USDW's:

(a) electric and caliper logs (before casing is installed);

(b) cement bond, temperature or density log (after casing is set and cemented);

(2) for intermediate and long strings of casing intended to facilitate injection:

(a) electric, porosity and gamma ray logs (before casing is installed);

(b) fracture finder logs;

(c) cement bond, temperature or density log (after casing is set and cemented).

5. At a minimum, the following information concerning the injection formation shall be determined or calculated for new wells:

a. fluid pressure;

b. temperature;

c. fracture pressure;

d. physical and chemical characteristics of the injection matrix; and

e. physical and chemical characteristics of the formation fluids.

B. Class III Construction Requirements

1. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Executive Secretary may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources or drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluids and formation fluids;

f. lithology of injection and confining zones; and

g. type and grade of cement.

2. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Executive Secretary. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

3. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

a. fluid pressure;

b. fracture pressure; and

c. physical and chemical characteristics of the formation fluids.

4. Where the injection zone is not a water bearing formation, only the fracture pressure must be submitted.

5. Where injection is into a formation which contains water with less than 10,000 mg/l TDS, monitoring wells shall be completed into the injection zone and into any USDW above the injection zone.

6. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

7. Where the injection wells penetrate an USDW in a area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the USDW.

10.2 Operation Requirements

A. For Class I Nonhazardous and Class III wells it is required that:

1. Except during stimulation, the injection pressure at the wellhead shall not exceed a maximum which shall be calculated to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall the injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.

2. Injection between the outermost casing protecting USDW's and the well bore is prohibited.

B. For Class I Nonhazardous wells, unless an alternative to tubing and packer has been approved, the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Executive Secretary and a pressure approved by the Secretary shall be maintained on the annulus.

10.3 Monitoring. The permittee shall identify types of tests and methods used to generate the monitoring data:

A. Class I Nonhazardous well monitoring shall, at a

minimum, include:

1. the analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

2. installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between tubing and the long string of casing;

3. a demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well; and

4. the type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDW, the parameters to be measured and the frequency of monitoring.

5. Ambient monitoring requirements for Class I Nonhazardous wells found in 40 C.F.R. 146.13(d).

B. Class III monitoring shall, at a minimum, include:

1. the analyses of the physical and chemical characteristics of the injected fluid with sufficient frequency to yield representative data on its characteristics;

2. monitoring of injection pressure and either flow rate or volume semi- monthly, or metering and daily recording of injected and produced fluid volumes as appropriate;

3. demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well for salt solution mining;

4. monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by Section 7-10.2 of these rules, semi-monthly;

5. quarterly monitoring of wells required by Section 7-10.1(B)(7).

6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required, provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

7. In determining the number, location, construction and frequency of monitoring of the monitoring wells, the criteria in 40 C.F.R. 146.32(h) shall be considered.

10.4 Reporting Requirements

A. For Class I Nonhazardous injection wells reporting shall, at a minimum, include:

1. quarterly reports to the Executive Secretary on:

a. the physical, chemical and other relevant characteristics of injection fluids;

b. monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

c. the results of monitoring of wells in the area of review.

2. Reporting the results, with the first quarterly report after the completion of:

a. periodic tests of mechanical integrity;

b. any other test of the injection well conducted by the permittee if required by the Executive Secretary; and

c. any well work over.

B. For Class III injection wells reporting shall, at a minimum, include:

1. quarterly reporting to the Executive Secretary on required monitoring;

2. results of mechanical integrity and any other periodic test required by the Executive Secretary reported with the first regular quarterly report after the completion of the test; and

3. monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

10.5 Plugging and Abandonment Requirements

A. Prior to abandoning Class I Nonhazardous and Class III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluid either into or between underground sources of drinking water. The Executive Secretary may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

B. Placement of the cement plugs shall be accomplished by one of the following:

1. the Balance Method;

2. the Dump Bailer Method;

3. the Two-Plug Method; or

4. an alternative method approved by the Executive Secretary which will reliably provide a comparable level of protection to USDW's.

C. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once, or by a comparable method prescribed by the Executive Secretary, prior to the placement of the cement plug.

D. The plugging and abandonment plan required in Section 7-9 shall, in the case of a Class III well field which underlies or is in an aquifer which has been exempted, also demonstrate adequate protection of USDW's. The Executive Secretary shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDW's.

10.6 Information to be Considered by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment of Class I Nonhazardous injection wells are found in 40 C.F.R. 146.14 and Class III injection wells are found in 40 C.F.R. 146.34.

R317-7-11. Technical Requirements for Class I Hazardous Waste Injection Wells.

11.1 Applicability. Statements of applicability and definitions are described in 40 C.F.R. 146.61.

11.2 Minimum Siting Criteria. Minimum siting requirements for Class I hazardous waste wells are described in 40 C.F.R. 146.62.

11.3 Area of Review. The area of review is defined for Class I hazardous waste injection wells in 40 C.F.R. 146.63.

11.4 Corrective Action for Wells in the Area of Review. Corrective action requirements for wells found within the area of review are located in 40 C.F.R. 146.64.

11.5 Construction Requirements. Construction requirements for all Class I hazardous waste injection wells are found in 40 C.F.R. 146.65.

11.6 Logging, Sampling, and Testing Prior to New Well Operation. Pre-operation requirements for logging, sampling, and testing of new wells are found in 40 C.F.R. 146.66.

11.7 Operating Requirements. Operation requirements for Class I hazardous waste injection wells are found in 40 C.F.R. 146.67.

11.8 Testing and Monitoring Requirements. Testing and monitoring requirements are found in 40 C.F.R. 146.68.

11.9 Reporting Requirements. Reporting requirements are found in 40 C.F.R. 146.69.

11.10 Information to be Evaluated by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment are found in 40 C.F.R. 146.70.

11.11 Closure. Well closure requirements are found in 40 C.F.R. 146.71.

11.12 Post-closure Care. Post-closure care requirements for Class I hazardous waste injection wells and facilities are found in 40 C.F.R. 146.72.

11.13 Financial Responsibility for Post-closure Care. Financial responsibility requirements for care of a Class I hazardous waste injection well during post-closure are found in 40 C.F.R. 146.73.

11.14 Requirements for Wells Injecting Hazardous Waste. Requirements for injection of waste accompanied by a manifest are found in 40 C.F.R. 144.14.

R317-7-12. Hazardous Waste Injection Restrictions.

12.1 Purpose, Scope, and Applicability. Standards are found in 40 C.F.R. 148.1.

12.2 Definitions. Definitions are found in 40 C.F.R. 148.2.

12.3 Dilution Prohibited as a Substitute for Treatment. The prohibition is found in 40 C.F.R. 148.3.

12.4 Procedures for Case-by-case Extensions to an Effective Date. Requirements are found in 40 C.F.R. 148.4.

12.5 Waste Analysis. Requirements are found in 40 C.F.R. 148.5.

12.6 Waste Specific Prohibitions - Solvent Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.10.

12.7 Waste Specific Prohibitions - Dioxin - Containing Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.11.

12.8 Waste Specific Prohibitions - California List Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.12.

12.9 Waste Specific Prohibitions - First Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.14.

12.10 Waste Specific Prohibitions - Second Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.15.

12.11 Waste Specific Prohibitions - Third Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.16.

12.12 Waste Specific Prohibitions - Newly Listed Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.17.

12.13 Petitions to Allow Injection of a Waste Prohibited Under Sections 7.11 and 7.12. Requirements for petitions to allow injection of prohibited wastes are found in 40 C.F.R. 148.20.

12.14 Information to be Submitted in Support of Petitions. Requirements are found in 40 C.F.R. 148.21.

12.15 Requirements for Petition Submission, Review and Approval or Denial. Requirements are found in 40 C.F.R. 148.22.

12.16 Review of Exemptions Granted Pursuant to a Petition. Requirements are found in 40 C.F.R. 148.23.

12.17 Termination of Approved Petition. Petition termination requirements are found in 40 C.F.R. 148.24.

R317-7-13. Public Participation.

In addition to adjudicatory hearings required under the State Administrative Procedures Act 63-46b, et seq. and proceedings otherwise outlined or referenced in these regulations, the Board or its duly appointed representative will investigate and provide written response to all citizen complaints duly submitted. In addition, the Board shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute or rule. The Board will publish notice of and provide at least thirty (30) days of public comment on any proposed settlement of any enforcement action.

KEY: water quality, underground injection control
August 25, 2006 19-5
Notice of Continuation July 18, 2006

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-5. Statewide Trauma System Standards.
R426-5-1. Authority and Purpose.

(1) Authority - This rule is established under Title 26, Chapter 8a, Part 2A, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the the trauma center designation requirements and verification process.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-5-2. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures established by the Department and applicable statutes.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-5-3. Trauma Center Categorization Guidelines.

(1) To establish a basis for trauma center categorization and designation, the Department shall utilize trauma center criteria established in the 1995 Utah Trauma System Plan. The criteria takes into consideration current national standards for trauma center categorization.

R426-5-4. Trauma Review Committee.

(1) The Department shall appoint a Trauma Review Committee. The committee shall annually evaluate trauma centers and applicants for compliance to standards set in R426-5-2 for verification. The committee shall report results to the Department. The committee shall be composed of the following persons:

(a) one surgeon, knowledgeable in trauma;

(b) one emergency physician;

(c) one nurse;

(d) one hospital administrator; and

(e) one Department representative.

(2) With the exception of the Department representative, tenure shall be three years. Initial appointments for the physicians, nurse and hospital administrator shall be for three, two and one year(s), respectively. Committee members may be reappointed. A physician representative shall serve as committee chair.

(3) Trauma Review Committee members shall not review their own hospitals. When this situation arises, the Department shall appoint a temporary alternate member.

R426-5-5. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-5.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

R426-5-6. Trauma Center Designation Process.

(1) Hospitals wishing designation recognition shall complete a Department application as outlined in R426-5-7.

(2) The Department shall, upon receipt of the completed application and appropriate fees, verify compliance to the designation level sought in accordance with protocols established by the department.

(3) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-5-7.

(4) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

R426-5-7. Trauma Center Verification Process.

(1) All designated Trauma Centers desiring to remain designated, shall apply for verification by submitting the following information to the Department at least six months prior to the anniversary date of initial designation:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) A letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) The data specified under R426-5-8;

(d) The minutes of pertinent hospital committee meetings for the previous year as specified by the Trauma Review Subcommittee, for example, trauma conferences, surgical morbidity and mortality meetings, emergency department or trauma death audits.

(e) A brief narrative report of trauma outreach education activities for the previous year;

(f) A brief narrative report of trauma research activities for the previous year including protocols and publications.

(2) All trauma centers desiring to apply for verification shall submit the required application and appropriate fees to the Department no later than January 1.

(3) Upon receipt of a verification application from the Department, accompanied by the information specified under R426-5-7(1)(a) through (f), the Trauma Review Committee shall conduct a review and report the results to the Department.

(4) Every three years, the Level I and II Trauma Centers

must submit written documentation detailing the results of an American College of Surgeons site visit.

(5) Every three years from the date of initial designation or from a date specified by the Department, the Trauma Review Subcommittee shall conduct a formal site visit for each designated Level III, IV, or V trauma center and report the results to the Department.

(6) The Department and the Trauma Review Committee may conduct activities with any designated trauma center to verify compliance with designation requirements which may include:

(a) Site visits to observe, unannounced, an actual trauma resuscitation, including the care and treatment of a trauma patient.

(b) Interview or survey prehospital care providers who frequent the trauma center, to ascertain that the pledged level of trauma care commitment is being maintained by the trauma center.

R426-5-8. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and quarterly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a trauma patient is as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); or

760.5 (fetus or newborn affected by trauma); or

641.8 (antepartum history due to trauma); or

518.5 (pulmonary embolism due to trauma); and

(b) Any of the following patient conditions:

admitted to the hospital for 48 hours or longer; transferred in or out of your hospital; died; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital).

The information shall be in a standardized electronic format specified by the Department which includes:

(i) Demographics:
Database Record Number
Institution ID number
Medical Record Number
Social Security Number
Patient Home Zip Code
Sex
Date of Birth
Age Number and Units
(ii) Injury:
Date of Injury
Time of Injury
City of Injury
State of Injury
Zip Code of Injury
Blunt, Penetrating, or Burn Injury
Cause of Injury Description
Cause of Injury Code
Cause of Injury E-code
Site/Location of Injury
Work Related Injury (y/n)
(iii) Prehospital:
Name of EMS Service
Transport Origin Scene or Referring Facility
Trip Form Obtained (y/n)
Arrival Time at (First) Hospital
Arrival Date at Hospital
(iv) Referring Hospital:
Transfer from Another Hospital (y/n)
Name or Code
Arrival Date
Arrival Time
Discharge Date
Discharge time
Transfer Mode
Admitted or ER
Procedures
Pulse
Capillary Refill
Respiratory Rate
Respiratory Effort
Blood Pressure
Eye Movement
Verbal Response
Motor Response
Glascow Coma Score Total
Revised Trauma Score Total
(v) Emergency Department Information:
Mode of Transport
Arrival Date
Arrival Time
Discharge Time
Discharge Date
Pulse
Capillary Refill
Respiratory Rate
Respiratory Effort
Blood Pressure
Eye Movement
Verbal Response
Motor Response
Arrival Glascow Coma Score Total
Revised Trauma Score Total
(vi) Emergency Department Treatment:
Procedures Done (pick list)
Paralytics used prior to GCS (y/n)
Disposition
(vii) Admission Information:
Admit from ER or Direct Admit
Admitted from what Source
Time of Hospital Admission
Date of Hospital Admission
(viii) Hospital Diagnosis:
ICD9 Diagnosis Codes
AIS 90 or 95 Used?
AIS Score for Diagnosis (calculated)
Injury Severity Score
(ix) Operations/Procedures:
ICD9 Codes
(x) Quality Assurance Indicators:
None
(xi) Complications:
None
(xii) Outcome:
Discharge Time
Discharge Date
Total Days Length of Stay
Disposition from Hospital
Destination Facility
GCS Outcome Score
(xiii) Charges:
Payment Sources

R426-5-9. Noncompliance to Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation , if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-5.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-5-10. Statutory Penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23, which provides for a civil money penalty of up to $5,000 per violation or a Class B misdemeanor on the first offense and a Class A misdemeanor on a subsequent offense.

KEY: emergency medical services, trauma, reporting
August 30, 2006 26-8a
Notice of Continuation October 30, 2002

R436. Health, Center for Health Data, Vital Records and Statistics.
R436-5. New Birth Certificates After Legitimation, Court Determination of Paternity, or Adoption.
R436-5-1. Authorization.

This rule is authorized by Section 26-2-10 and describes the procedures for preparing new birth certificates after legitimation, Court determination of paternity or adoption.

R436-5-2. Definition.

For the purpose of this rule "Supplementary certificate of birth" as used in Section 26-2-10 of the Utah statutes means a new birth certificate prepared to replace the original registered birth certificate.

R436-5-3. Legitimation.

(1) The State Registrar shall prepare a new certificate of birth for a child born in this state if the natural parents submit a sworn acknowledgement of paternity, a certified copy of the marriage certificate and pay the required fee. However, if another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction or following adoption.

(2) The acknowledgement of paternity may also specify a name change for the child.

R436-5-4. Court Determination of Paternity.

(1) A person whose parentage has been determined by court order, or his legal representative, may obtain a new birth certificate by presenting a certified copy of the court order to the State Registrar along with the required fee. The Registrar shall prepare the new birth certificate with the full name of the person as specified in the court order. If the court order does not specify the name to be placed on the birth certificate, the State Registrar shall prepare the new birth certificate with the name as listed on the original birth certificate.

(2) If the court order does not specify the name to be placed on the birth certificate and if the original birth certificate does not list the name of the person, the State Registrar shall prepare the new birth certificate without a name. A person whose parentage has been determined by court order and whose new birth certificate does not list his name, or his legal representative, may seek amendment of the new birth certificate pursuant to the provisions of R436-3-2.

R436-5-5. Adoption.

Unless the court order of adoption or report of adoption specifies that a new birth certificate is not to be prepared, the State Registrar shall prepare new birth certificate for a child born in this state upon receipt of a court order of adoption or a court report of adoption certified by the clerk of the court and payment of the required fee. The full name of the child to be entered on the new birth certificate shall be as specified in the court order. A court order of adoption for foreign born persons may also serve as a court order delayed registration of birth as provided in R436-6-1.

R436-5-6. Legal Representative.

For purposes of Section 26-2-10, a legal representative with authority to make application for registration of a new birth certificate is limited to any of the following:

(1) the custodial parent;

(2) a person given authority for purposes of making application for registration of the new birth certificate by a court of competent jurisdiction; and

(3) a person granted power of attorney for purposes of making application for registration of the new birth certificate by:

(a) the person who is the subject of the birth certificate, if of legal age;

(b) the custodial parent, if a sworn attestation of custodianship is included with the power of attorney; or

(c) both parents acting jointly.

R436-5-7. Existing Certificate to Be Placed in a Special File.

Upon preparation of a new certificate under this rule, the State Registrar shall place the original certificate and the evidence upon which the new certificate was based in a sealed file. The sealed file is not be subject to inspection, except upon order of a court of competent jurisdiction or by the State Registrar for the purpose of properly administering the vital statistics program. The State Registrar shall provide a copy of the new birth certificate to the local registrar who has a copy of the original on file. Upon receipt of the new certificate, the local registrar shall replace the copy with the new certificate and return the copy to the State Registrar for destruction or destroy the local copy and so notify the State Registrar. The local registrar shall also delete or destroy index entries referring to the original certificate.

KEY: birth, legitimation, court, adoption
May 1, 1996 **26-2-10**
Notice of Continuation August 28, 2006

R495. Human Services, Administration.
R495-876. Provider Code of Conduct.
R495-876-1. Statement of Purpose.

The Department of Human Services ("DHS") adopts this Code of Conduct to:

(a) Protect its clients from abuse, neglect, maltreatment and exploitation; and

(b) Clarify the expectation of conduct for DHS Providers and their employees and volunteers who interact in any way with DHS clients, DHS staff and the public.

The Provider shall distribute a copy of this Code of Conduct to each employee and volunteer, regardless of whether the employees or volunteers provide direct care to clients, indirect care, administrative services or support services. The Provider shall require each employee and volunteer to read the Code of Conduct and sign a copy of the attached "Certification of Understanding" before having any contact with DHS clients. The Provider shall file a copy of the signed Certificate of Understanding in each employee and volunteer's personnel file. The Provider shall also maintain a written policy that adequately addresses the appropriate treatment of clients and that prohibits the abuse, neglect, maltreatment or exploitation of clients. This policy shall also require the Provider's employees and volunteers to deal with DHS staff and the public with courtesy and professionalism.

This Code of Conduct supplements various statutes, policies and rules that govern the delivery of services to DHS clients. The Providers and the DHS Divisions or Offices may not adopt or enforce policies that are less-stringent than this Code of Conduct unless those policies have first been approved in writing by the Office of Licensing and the Executive Director of the Utah Department of Human Services. Nothing in this Code of Conduct shall be interpreted to mean that clients are not accountable for their own misbehavior or inappropriate behavior, or that Providers are restricted from imposing appropriate sanctions for such behavior.

R495-876-2. Abuse, Neglect, Exploitation, and Maltreatment Prohibited.

Providers shall not abuse, neglect, exploit or maltreat clients in any way, whether through acts or omissions or by encouraging others to act or by failing to deter others from acting.

R495-876-3. General Definitions.

"Client" means anyone who receives services from DHS or from a Provider pursuant to an agreement with DHS or funding from DHS.

"DHS" means the Utah Department of Human Services or any of its divisions, offices or agencies.

"Domestic-violence-related child abuse" means any domestic violence or a violent physical or verbal interaction between cohabitants in the physical presence of a child or having knowledge that a child is present and may see or hear an act of domestic violence.

"Emotional maltreatment" means conduct that subjects the client to psychologically destructive behavior, and includes conduct such as making demeaning comments, threatening harm, terrorizing the client or engaging in a systematic process of alienating the client.

"Provider" means any individual or business entity that contracts with DHS or with a DHS contractor to provide services to DHS clients. The term "Provider" also includes licensed or certified individuals who provide services to DHS clients under the supervision or direction of a Provider. Where this Code of Conduct states (as in Sections III-VII) that the "Provider" shall comply with certain requirements and not engage in various forms of abuse, neglect, exploitation or maltreatment, the term "Provider" also refers to the Provider's employees, volunteers and subcontractors, and others who act on the Provider's behalf or under the Provider's control or supervision.

"Restraint" means the use of physical force or a mechanical device to restrict an individual's freedom of movement or an individual's normal access to his or her body. "Restraint" also includes the use of a drug that is not standard treatment for the individual and that is used to control the individual's behavior or to restrict the individual's freedom of movement.

"Seclusion" means the involuntary confinement of the individual in a room or an area where the individual is physically prevented from leaving.

"Written agency policy" means written policy established by the Provider. If a written agency policy contains provisions that are more lenient than the provisions of this Code of Conduct, those provisions must be approved in writing by the DHS Executive Director and the Office of Licensing.

R495-876-4. Definitions of Prohibited Abuse, Neglect, Exploitation, and Maltreatment.

A. "Abuse" includes, but is not limited to:

1. Harm or threatened harm, to the physical or emotional health and welfare of a client.

2. Unlawful confinement.

3. Deprivation of life-sustaining treatment.

4. Physical injury, such as contusion of the skin, laceration, malnutrition, burn, fracture of any bone, subdural hematoma, injury to any internal organ, any injury causing bleeding, or any physical condition which imperils a client's health or welfare.

5. Any type of unlawful hitting or corporal punishment.

6. Domestic-violence-related child abuse.

7. Any Sexual abuse and sexual exploitation including but not be limited to:

a. Engaging in sexual intercourse with any client.

b. Touching the anus or any part of the genitals or otherwise taking indecent liberties with a client, or causing an individual to take indecent liberties with a client, with the intent to arouse or gratify the sexual desire of any person.

c. Employing, using, persuading, inducing, enticing, or coercing a client to pose in the nude.

d. Engaging a client as an observer or participation in sexual acts.

e. Employing, using, persuading, inducing, enticing or coercing a client to engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct. This includes displaying, distributing, possessing for the purpose of distribution, or selling material depicting nudity, or engaging in sexual or simulated sexual conduct with a client.

f. Committing or attempting to commit acts of sodomy or molestation with a client.

B. "Neglect" includes but is not limited to:

1. Denial of sufficient nutrition.

2. Denial of sufficient sleep.

3. Denial of sufficient clothing, or bedding.

4. Failure to provide adequate client supervision; including situations where the Provider's employee or volunteer is a sleep or ill on the job, or is impaired due to the use of alcohol or drugs.

5. Failure to provide care and treatment as prescribed by the client's services, program or treatment plan, including the failure to arrange for medical or dental care or treatment as prescribed or as instructed by the client's physician or dentist, unless the client or the Provider obtains a second opinion from another physician or dentist, indicating that the originally-prescribed medical or dental care or treatment is unnecessary.

6. Denial of sufficient shelter, where shelter is part of the services the Provider is responsible for providing to the client.

7. Educational neglect (i.e. willful failure or refusal to make a good faith effort to ensure that a child in the Provider's care or custody receives an appropriate education).

C. "Exploitation" will includes but is not limited to:

1. Using a client's property without the client's consent or using a client's property in a way that is contrary to the client's best interests, such as expending a client's funds for the benefit of another.

2. Making unjust or improper use of clients or their resources.

3. Accepting a gifts in exchange for preferential treatment of a client or in exchange for services that the Provider is already obliged to provide to the client.

4. Using the labor of a client for personal gain.

5. Using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, except where such use is consistent with standard therapeutic practices and is authorized by DHS policy or the Provider's contract with DHS.

a. Examples:

(i) It is not "exploitation" for a foster parent to assign an extra chore to a foster child who has broken a household rule, because the extra chore is reasonable discipline and teaches the child to obey the household rules.

(ii) It is not "exploitation" to require clients to help serve a meal at a senior center where they receive free meals and are encouraged to socialize with other clients. The meal is a non-monetary compensation, and the interaction with other clients may serve the clients' therapeutic needs.

(iii) It is usually "exploitation" to require a client to provide extensive janitorial or household services without pay, unless the services are actually an integral part of the therapeutic program, such as in "clubhouse" type programs that have been approved by DHS.

D. "Maltreatment" includes but is not limited to:

1. Physical exercises, such as running laps or performing pushups, except where such exercises are consistent with an individual's service plan and written agency policy and with the individual's health and abilities.

2. Any form of Restraint or Seclusion used by the Provider for reasons of convenience or to coerce, discipline or retaliate against a client. The Provider may use a Restraint or Seclusion only in emergency situations where such use is necessary to ensure the safety of the client or others and where less restrictive interventions would be ineffective, and only if the use is authorized by the client's service plan and administered by trained authorized personnel. Any use of Restraint or Seclusion must end immediately once the emergency safety situation is resolved. The Provider shall comply with all applicable laws about Restraints or Seclusions, including all federal and state statutes, regulations, rules and policies.

3. Assignment of unduly physically strenuous or harsh work.

4. Requiring or forcing the individual to take an uncomfortable position, such as squatting or bending, or requiring or forcing the individual to repeat physical movements as a means of punishment.

5. Group punishments for misbehaviors of individuals.

6. Emotional maltreatment, bullying, teasing, provoking or otherwise verbally or physically intimidating or agitating a client.

7. Denial of any essential program service solely for disciplinary purposes.

8. Denial of visiting or communication privileges with family or significant others solely for disciplinary purposes.

9. Requiring the individual to remain silent for long periods of time for the purpose of punishment.

10. Extensive withholding of emotional response or stimulation.

11. Denying a current client from entering the client's residence, where such denial is for disciplinary or retaliatory purposes or for any purpose unrelated to the safety of clients or others.

R495-876-5. Provider's Compliance with Conduct Requirements Imposed by Law, Contract or Other Policies.

In addition to complying with this Code of Conduct, the Provider shall comply with all applicable laws (such as statutes, rules and court decisions) and all policies adopted by the DHS Office of Licensing, by the DHS Divisions or Offices whose clients the Provider serves, and by other state and federal agencies that regulate or oversee the Provider's programs. Where the Office of Licensing or another DHS entity has adopted a policy that is more specific or restrictive than this Code of Conduct, that policy shall control. If a statute, rule or policy defines abuse, neglect, exploitation or maltreatment as including conduct that is not expressly included in this Code of Conduct, such conduct shall also constitute a violation of this Code of Conduct. See, e.g., Title 62A, Chapter 3 of the Utah Code (definition of adult abuse) and Title 78, Chapter 3a and Title 76, Chapter 5 of the Utah Code (definitions of child abuse).

R495-876-6. The Provider's Interactions with DHS Personnel and the Public.

In carrying out all DHS-related business, the Provider shall conduct itself with professionalism and shall treat DHS personnel, the members of the Provider's staff and members of the public courteously and fairly. The Provider shall not engage in criminal conduct or in any fraud or other financial misconduct.

R495-876-7. Sanctions for Non-compliance.

If a Provider or its employee or volunteer fail to comply with this Code of Conduct, DHS may impose appropriate sanctions (such as corrective action, probation, suspension, disbarment from State contracts, and termination of the Provider's license or certification) and may avail itself of all legal and equitable remedies (such as money damages and termination of the Provider's contract). In imposing such sanctions and remedies, DHS shall comply with the Utah Administrative Procedures Act and applicable DHS rules. In appropriate circumstances, DHS shall also report the Provider's misconduct to law enforcement and to the Provider's clients and their families or legal representatives (e.g., a legal guardian). In all cases, DHS shall also report the Provider's misconduct to the licensing authorities, including the DHS Office of Licensing.

R495-876-8. Providers' Duty to Help DHS Protect Clients.

A. Duty to Protect Clients' Health and Safety. If the Provider becomes aware that a client has been subjected to any abuse, neglect, exploitation or maltreatment, the Provider's first duty is to protect the client's health and safety.

B. Duty to Report Problems and Cooperate with Investigations. Providers shall document and report any abuse, neglect, exploitation or maltreatment and exploitation as outlined in this Code of Conduct, and they shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies.

1. Except as provided in Section (B)(1)(a) and (B)(3) below, Providers shall immediately report abuse, neglect, exploitation or maltreatment by contacting the local Regional Office of the appropriate DHS Division or Office. During weekends and on holidays, Providers shall make such reports to the on-call worker of that Regional Office.

a. Providers shall report any abuse or neglect of disabled or elder adults to the Adult Protective Services intake office of the Division of Aging and Adult Services.

b. The Provider shall make all reports and documentation about abuse, neglect, exploitation, and maltreatment available to appropriate DHS personnel and law enforcement upon request.

2. Providers shall document any client injury (explained or unexplained) that occurs on the Providers' premises or while the client is under the Provider's care and supervision, and the Provider shall report any such injury to supervisory personnel immediately. Providers shall cooperate fully in any investigation conducted by DHS, law enforcement or other regulatory or monitoring agencies. If the client's injury is extremely minimal, the Provider has 12 hours to report the injury. The term "extremely minimal" refers to injuries that obviously do not require medical attention (beyond washing a minor wound and applying a band-aid, for example) and which cannot reasonably be expected to benefit from advice or consultation from the supervisory personnel or medical practitioners.

a. Example: If a foster child falls off a swing and skins her knee slightly, the foster parent shall document the injury and report to the foster care worker within 12 hours.

b. Example: If a foster child falls off a swing and sprains or twists her ankle, the foster parent shall document the injury and report it immediately to supervisory personnel because the supervisor may want the child's ankle X-rayed or examined by a physician.

C. Duty to Report Fatalities and Cooperate in Investigations and Fatality Reviews.

If a DHS client dies while receiving services from the Provider, the Provider shall notify the supervising DHS Division or Office immediately and shall cooperate with any investigation into the client's death. In addition, some Providers are subject to the Department of Human Services' Fatality Review Policy. (See the "Eligibility" section of DHS Policy No. 05-02 for a description of the entities subject to the fatal-review requirements. A copy of the policy is available at the DHS web site at: http://www.dhs.state.ut.us/policy.htm) If the Provider is subject to the Fatality Review Policy, it shall comply with that policy (including all reporting requirements) and the Provider shall cooperate fully with any fatality reviews and investigations concerning a client death.

D. Duty to Display DHS Poster. The Provider shall prominently display in each facility a DHS poster that notifies employees of their responsibilities to report violations of this Provider Code of Conduct, and that gives phone numbers for the Regional Office or Intake Office of the relevant DHS Division(s). Notwithstanding the foregoing, if the Provider provides its services in a private home and if the Provider has fewer than three employees or volunteers, the Provider shall maintain this information in a readily-accessible place but it need not actually display the DHS poster. DHS shall annually provide the Provider with a copy of the current DHS poster or it shall make the poster available on the DHS web site: http://www.dhs.state.ut.us.

KEY: social services, provider conduct*
August 15, 2001 62A-1-110
Notice of Continuation August 22, 2006

R495. Human Services, Administration.
R495-880. Adoption Assistance.
R495-880-1. Regional Adoption Assistance Advisory Committee.

(1) There is established, within each region of the Division of Child and Family Services an adoption assistance advisory committee to review and make recommendations to the division on individual requests for supplemental adoption assistance. For purposes of this rule, supplemental adoption assistance means the same as is defined in Utah Code Annotated Section 62A-4a-902. Each advisory committee shall be comprised of the following members:

(a) an expert in adoption policy and practice, as determined by the division;

(b) an adoptive parent;

(c) a division representative;

(d) a foster parent; and

(e) an adoption caseworker.

(2) The advisory committees established pursuant to Subsection (1) of this rule shall review individual requests for supplemental adoption assistance that meet a threshold amount established by policy by the Board of Child and Family Services in R512-43.

KEY: adoption, child welfare
August 15, 2001 62A-4a-905
Notice of Continuation August 15, 2006

R512. Human Services, Child and Family Services.
R512-203. Child Protective Services, Significant Risk Assessments.
R512-203-1. Authority and Purpose.

Pursuant to Section 62A-4a-105, the Division of Child and Family Services (DCFS) is authorized to provide Child Protective Services (CPS). DCFS is required by Section 62A-4a-116.1(4)(a) to promulgate a rule for making significant risk assessments.

R512-203-2. Definitions.

A. Assessment means an evaluation made to determine if a minor is a risk to other children and whether or not a minor's name should be placed and retained on the Licensing Information System.

B. Significant risk means that a minor is likely to continue perpetrating against other children.

R512-203-3. Significant Risk Assessments.

A. During the course of a CPS investigation involving allegations of conduct by a juvenile that is identified as severe or chronic as those terms are defined in Sections 62A-4a-101 and 62A-4a-116.1, the CPS worker shall complete a significant risk assessment to determine whether a juvenile is a significant risk to other children or the community.

B. To conduct this assessment the CPS worker shall use the assessment tool developed by DCFS for the purpose of determining risk presented by the minor. The tool used will be the most current version of the significant risk assessment.

C. The assessment shall be based upon the facts of the case that are present during the CPS investigation.

D. The assessment process identified in Section R512-203-3A is not for determining whether the allegation under investigation is supported or unsupported.

E. The juvenile's age alone is not a reason for determining whether the juvenile presents a significant risk.

F. The completed significant risk assessment instrument for each minor assessed shall be made a part of the CPS record and shall be classified as Private pursuant to the Government Records Management and Access Act.

KEY: child welfare, child abuse
June 1, 2006 **62A-4a-105**
62A-4a-116.1

R512. Human Services, Child and Family Services.
R512-300. Out of Home Services.
R512-300-1. Purpose and Authority.

A. The purposes of Out of Home Services are:

1. To provide a temporary, safe living arrangement for a child placed in the custody of the Division or Department by court order or through voluntary placement by the child's parent or legal guardian.

2. To provide services to protect the child and facilitate safe return of the child home or to another permanent living arrangement.

3. To provide safe and proper care and address the child's needs while in agency custody.

B. Sections 62A-4a-105 and 62A-4a-106 authorize the Division to provide out-of-home services and 42 USC Section 472 authorizes federal foster care. 42 USC Section 472 (2000), and 45 CFR Parts 1355 and 1356 (2000) are incorporated by reference.

R512-300-2. Definitions.

The following terms are defined for the purposes of this rule:

A. Custody by court order means temporary custody or custody authorized by Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings or Section 78-3a-118. It does not include protective custody.

B. Division means the Division of Child and Family Services.

C. Department means the Department of Human Services.

D. Least restrictive means most family-like.

E. Placement means living arrangement.

R512-300-3. Scope of Services.

A. Qualification for Services. Out of home services are provided to:

1. A child placed in the custody of the Division by court order and the child's parent or guardian, if the court orders reunification;

2. A child placed in the custody of the Department by court order for whom the Division is given primary responsibility for case management or for payment for the child's placement, and the child's parent or guardian if reunification is ordered by the court;

3. A child voluntarily placed into the custody of the Division and the child's parent or guardian.

B. Service Description. Out of home services consist of:

1. Protection, placement, supervision and care of the child;

2. Services to a parent or guardian of a child receiving out of home services when a reunification goal is ordered by the court or to facilitate return of a child home upon completion of a voluntary placement.

3. Services to facilitate another permanent living arrangement for a child receiving out of home services if a court determines that reunification with a parent or guardian is not required or in the child's best interests.

C. Availability. Out of home services are available in all geographic regions of the state.

D. Duration of Services. Out of home services continue until a child's custody is terminated by a court or when a voluntary placement agreement expires or is terminated.

R512-300-4. Division Responsibility to a Child Receiving Out of Home Services.

A. Child and Family Team.

1. With the family's assistance, a child and family team shall be established for each child receiving out of home services.

2. At a minimum, the child and family team shall assist with assessment, child and family plan development, and selection of permanency goals; oversee progress towards completion of the plan; provide input into adaptations to the plan; and recommend placement type or level.

B. Assessment.

1. A written assessment is completed for each child placed in custody of the Division through court order or voluntary placement and for the child's family.

2. The written assessment evaluates the child and family's strengths and underlying needs.

3. The type of assessment is determined by the unique needs of the child and family, such as cultural considerations, special medical or mental health needs, and permanency goals.

4. Assessment is ongoing.

C. Child and Family Plan.

1. Based upon an assessment, each child and family receiving out of home services shall have a written child and family plan in accordance with Section 62A-4a-205.

2. The child's parent or guardian and other members of the child and family team shall assist in creating the plan based on the assessment of the child and family's strengths and needs.

3. In addition to requirements specified in Section 62A-4a-205, the child and family plan shall include the following to facilitate permanency:

a. The current strengths of the child and family as well as the underlying needs to be addressed.

b. A description of the type of placement appropriate for the child's safety, special needs and best interests, in the least restrictive setting available and, when the goal is reunification, in reasonable proximity to the parent. If the child with a goal of reunification has not been placed in reasonable proximity to the parent, the plan shall describe reasons why the placement is in the best interests of the child.

c. Goals and objectives for assuring the child receives safe and proper care including the provision of medical, dental, mental health, educational, or other specialized services and resources.

d. If the child is age 16 or older, a written description of the programs and services to help the child prepare for the transition from foster care to independent living in accordance with Rule R512-305.

e. A visitation plan for the child, parents, and siblings, unless prohibited by court order.

f. Steps for monitoring the placement and plan for worker visitation and supports to the out of home caregiver for a child placed in Utah or out of state.

g. If the goal is adoption or placement in another permanent home, steps to finalize the placement, including child-specific recruitment efforts.

4. The child and family plan is modified when indicated by changing needs, circumstances, progress towards achievement of service goals, or the wishes of the child, family, or child and family team members.

5. A copy of the completed child and family plan shall be provided to the parent or guardian, out of home caregiver, juvenile court, assistant attorney general, guardian ad litem, legal counsel for the parent, and the child, if the child is able to understand the plan.

D. Permanency Goals.

1. A child in out of home care shall have a primary permanency goal and a concurrent permanency goal identified by the child and family team.

2. Permanency goals include:

a. Reunification.

b. Adoption.

c. Guardianship (Relative).

d. Guardianship (Non-Relative).

e. Individualized Permanency.

3. For a child whose custody is court ordered, both primary and concurrent permanency goals shall be submitted to

the court for approval.

4. The primary permanency goal shall be reunification unless the court has ordered that no reunification efforts be offered.

5. A determination that independent living services are appropriate for a child does not preclude adoption as a primary permanency goal. Enrollment in independent living services can occur concurrently with continued efforts to locate and achieve placement of an older child with an adoptive family.

E. Placement.

1. A child receiving out of home services shall receive safe and proper care in an appropriate placement according to placement selection criteria specified in Rule R512-302.

2. The type of placement, either initial or change in placement, is determined within the context of the child and family team utilizing a need level screening tool designated by the Division.

3. Placement decisions are based upon the child's needs, strengths and best interests.

4. The following factors are considered in determining placement:

a. Age, special needs, and circumstances of the child;

b. Least restrictive placement consistent with the child's needs;

c. Placement of siblings together;

d. Proximity to the child's home and school;

e. Sensitivity to cultural heritage and needs of a minority child;

f. Potential for adoption.

5. A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the out of home caregiver or the child involved.

6. Placement of an Indian child shall be in compliance with the Indian Child Welfare Act, 25 USC Section 1915, which is incorporated by reference.

7. When a young woman in Division custody is mother of a child, and desires and is able to parent the child with the support of the out of home caregiver, the child shall remain in the out of home placement with the mother. The Division shall only petition for custody of the young woman's child if there are concerns of abuse, neglect, or dependency in accordance with Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

8. The child and family team may recommend an independent living placement for a child age 16 year or older in accordance with Rule R512-305 when in the child's best interests.

G. Federal Benefits.

1. The Division may apply for eligibility for Title IV-E foster care and Medicaid benefits for a child receiving out of home services. Information provided by the parent or guardian, as specified in Rule R512-301, shall be utilized in determining eligibility.

2. The Division may apply to be protective payee for a child in custody who has a source of unearned income, such as Supplemental Security Income or Social Security income. A trust account shall be maintained by the Division for management of the child's income. The unearned income shall be utilized only towards costs of the child's care and personal needs in accordance with requirements of the regulating agency.

H. Visitation with Familial Connections.

1. The child has a right to purposeful and frequent visitation with a parent or guardian and siblings, unless the court orders otherwise.

2. Visitation is not a privilege to be earned or denied based on behavior of the child or the parent or guardian.

3. Visitation may be supplemented with telephone calls and written correspondence.

4. The child also has a right to communicate with extended family members, the child's attorney, physician, clergy, and others who are important to the child.

5. Intensive efforts shall be made to engage a parent or guardian in continuing contacts with a child, when not prohibited by court order.

6. If clinically contraindicated for the child's safety or best interests, the Division may petition the court to deny or limit visitation with specific individuals.

7. Visitation and other forms of communication with familial connections shall only be denied when ordered by the court.

8. A parent whose parental rights have been terminated does not have a right to visitation.

I. Out of Home Worker Visitation with the Child.

1. The out of home worker shall visit with the child to ensure that the child is safe and is appropriately cared for while in an out of home placement. If the child is placed out of the area or out of state, arrangements may be made for another worker to perform some of the visits. The child and family team shall develop a specific plan for the worker's contacts with the child based upon the needs of the child.

J. Case Reviews.

1. Pursuant to Sections 78-3a-311.5, 73-3a-312, and 78-31-313, periodic reviews of court ordered out of home services shall be held no less frequently than once every six months.

2. The Division shall seek to ensure that each child receiving out of home services has timely and effective case reviews and that the case review process:

a. Expedites permanency for a child receiving out of home services,

b. Assures that the permanency goals, child and family plan, and services are appropriate,

c. Promotes accountability of the parties involved in the child and family planning process, and

d. Monitors the care for a child receiving out of home services.

KEY: social services, child welfare, domestic violence, child abuse

June 1, 2006 62A-4a-105

R512. Human Services, Child and Family Services.
R512-308. Out of Home Services, Guardianship Services and Placements.
R512-308-1. Purpose and Authority.

A. Guardianship services and placements provide a permanent, safe living arrangement for a child in the court-ordered custody of the Division or Department when it is not appropriate for the child to return home or be adopted, and continuing agency custody is not in the child's best interest.

B. Guardianship services are authorized by Sections 62A-4a-105(6) and 78-3a-103.

R512-308-2. Definitions.

A. "Child and Family Team" means a group that meets together as often as needed and works to support the family and assist them in meeting their needs. This may include the referent or other concerned individuals identified by the family as support persons.

B. "Guardianship" has the same meaning as defined in Section 78-3a-103.

C. "Division" means the Division of Child and Family Services.

R512-308-3. General Guardianship Qualifying Factors.

A. General qualifying factors apply for both relative and non-relative guardianship, and all factors must be met.

1. The child cannot safely return home. This requirement is met if the court determines that reunification with the child's parents is not possible or appropriate and the Child and Family Team and regional screening committee agree that adoption is not an appropriate plan for the child.

2. The parent and child have a significant bond but the parent is unable to provide ongoing care for the child, such as an emotional, mental, or physical disability, and the child's current caregiver has committed to raising the child to the age of majority and to facilitate visitation with the parent.

3. The prospective guardian must:

a. Be able to maintain a stable relationship with the child;

b. Have a strong commitment to providing a safe and stable home for the child on a long-term basis;

c. Have a means of financial support and connections to community resources; and

d. Be able to care for the child without Division supervision.

4. The child has no ongoing care or financial needs beyond basic maintenance and does not require the services of a case manager.

5. There are compelling reasons why the child cannot be adopted, such as when the child's tribe has exclusive jurisdiction or the tribe has chosen to intervene in the adoption proceedings. Under the Indian Child Welfare Act (ICWA) of 1978, Public Law No. 95-608, 92 Stat. 3069 codified at 25 U.S.C. 1901-63, a tribe has the right to determine the child's permanency. For this reason, the tribe has the authority to approve guardianship with the current caregiver.

R512-308-4. Non-Relative Qualifying Factors.

A. In addition to general qualifying factors in R512-308-3, all of the following factors apply to non-relative guardianship and must be met.

1. The child is in the Division's legal custody and has been in custody for at least 12 consecutive months. If this is a sibling group, at least one child must have been in custody for 12 consecutive months.

2. The prospective guardian is a licensed foster parent.

3. The child has lived for at least six months in the home of the prospective guardian. The regional director or designee may waive the six-month placement requirement for sibling groups if at least one sibling has been in the home for six months and meets all other eligibility criteria.

4. A Child and Family Team has formally assessed the placement and found that continuation with the caregiver is in the child's best interest and supports the safety, permanency, and well-being of the child.

5. The Division has no concerns with the care the child has received in the home.

6. The child has a stable and positive relationship with the prospective guardian.

7. The child has reached the age of 12 years. The regional director or designee may waive the age requirement for members of a sibling group placed with a non-relative if at least one sibling is 12 years of age or older and meets all other guardianship criteria and adoption is not the best permanency option for the younger children.

R512-308-5. Relative Qualifying Factors.

A. In addition to general qualifying factors found in R512-308-3, all of the following factors apply for relative guardianship and must be met.

1. The child's prospective guardian is a relative who meets the relationship requirements of the Department of Workforce Services Specified Relative Program, which currently includes:

a. Grandfather or grandmother;

b. Brother or sister;

c. Uncle or aunt;

d. First cousin;

e. First cousin once removed (a first cousin's child);

f. Nephew or niece;

g. Persons of preceding generations as designated by prefixes of grand, great, great great, or great great great;

h. Spouses of any relative mentioned above even if the marriage has been terminated;

i. Persons that meet any of the above-mentioned relationships by means of a step relationship; or

j. Relatives that meet one of these relationships by legal adoption.

2. If not licensed as a foster parent, the relative has completed kinship screening, including a home study and background checks, in accordance with kinship practice guidelines.

3. The child's needs may be met without continued Division funding. In order to be considered for a guardianship subsidy, the prospective relative guardian must be a licensed foster parent and demonstrate that they cannot qualify for a Specified Relative Grant through the Department of Workforce Services as outlined in R512-308-6.

R512-308-6. Guardianship Subsidy Availability, Scope, Duration.

A. Guardianship subsidies are available to meet the care and maintenance needs for children in foster care:

1. For whom guardianship has been determined as the most appropriate primary goal.

2. Who do not otherwise have adequate resources available for their care and maintenance.

3. Who meet the qualifying factors described in R512-308-4 Non-Relative Qualifying Factors and who cannot qualify to receive a Specified Relative Grant from the Department of Workforce Services.

a. The caseworker must be provided with a copy of a denial letter from the Department of Workforce Services or written proof that the relationship requirements do not apply, such as through relevant birth certificates.

b. Approval from the regional guardianship screening committee and regional administration is required in making this determination.

B. If a prospective guardian is found to be receiving both a Specified Relative Grant and guardianship subsidy for the

same child, the caseworker will notify the Department of Workforce Services and appropriate actions may be taken for repayment.

C. Guardianship subsidies are available through the month in which the child reaches age 18.

D. Each region may establish a limit to the number of eligible children who may receive guardianship subsidies.

E. Guardianship subsidies are subject to the availability of state funds designated for this purpose.

R512-308-7. Regional Guardianship Subsidy Screening Committee.

A. Each region shall establish at least one regional guardianship subsidy screening committee. This committee may be combined with another appropriate committee, such as the adoption subsidy committee or placement committee.

B. The regional guardianship subsidy screening committee shall be comprised of at least five members. A minimum of three members must be present for making decisions regarding a guardianship subsidy. Decisions shall be made by consensus.

C. The regional guardianship subsidy screening committee is responsible to:

1. Verify that a child qualifies for a guardianship subsidy.

2. Approve the level of need and amount of monthly subsidy for initial requests, changes, and renewals.

3. Document the committee's decisions.

4. Coordinate supportive services to prevent disruptions and preserve permanency.

R512-308-8. Determining Guardianship Subsidy Amounts.

A. The regional guardianship subsidy screening committee will determine the subsidy amount by considering the special needs of the child and the circumstances of the guardian family. The caseworker presents to the committee information regarding the special needs of the child, the guardian family income and expenses, and/or the guardian family's special circumstances.

B. All of the following factors must be considered when determining the amount of the monthly subsidy to be granted:

1. All sources of financial support for the child including Supplemental Security Income, Social Security benefits, and other benefits. The regional guardianship subsidy committee may require verification of financial support.

a. If a child is receiving benefit income and the income can continue after guardianship is granted, this amount will be deducted from the guardianship subsidy amount.

b. The guardianship subsidy should not replace other available income, such as Supplemental Security Income.

C. A guardianship subsidy will not exceed the levels indicated in Level I and Level II below, and may be less based upon the ongoing needs of the child and the needs of the guardian family.

1. Guardianship Level I (Basic): Guardianship Level I is for a child who may have mild to moderate medical needs, psychological, emotional, or behavioral problems, and who requires parental supervision and care. The amount of guardianship subsidy for a child whose needs are within Level I may be any amount up to the lowest basic foster care rate.

2. Guardianship Level II (Specialized): Guardianship Level II is for a child who may be physically disabled, developmentally delayed, medically needy or medically fragile, or have a serious emotional disorder. The amount of the guardianship subsidy may range from the lowest basic foster care rate to the lowest specialized foster care rate.

D. Children who are receiving the structured foster care rate in foster care or who are in a group or residential setting are considered for the Guardianship Level II rate.

E. Guardianship subsidies may not exceed the Guardianship Level II rate.

F. Guardianship subsidies are funded with state general funds within regional foster care budgets. A region has the discretion to limit the number of guardianship subsidies or reduce guardianship subsidy rates based on the availability of funds.

G. Changing the amount of the guardianship subsidy.

1. The amount of a guardianship subsidy does not automatically increase when there is a foster care rate change or as the child ages.

2. A guardian may request a guardianship subsidy review when seeking an increase in the guardianship subsidy amount, not to exceed the maximum amount allowable for the child's level of need. The guardian must complete the Request for Subsidy Increase Form to provide documentation to justify the request.

3. The request must be reviewed and approved by the regional guardianship subsidy screening committee. If approved, a new Guardian Subsidy Agreement will be completed.

4. The Division must provide written notice of agency action by certified mail at least 30 days in advance if a guardianship subsidy rate is going to be reduced.

R512-308-9. Guardianship Subsidy Agreement.

A. A Guardianship Subsidy Agreement specifies the terms for financial support for the child's basic needs.

B. A guardianship subsidy worker will complete the Guardianship Subsidy Agreement.

C. The effective date of the initial agreement is the date of the court order granting guardianship.

D. A Guardianship Subsidy Agreement must:

1. Be signed by the guardian and the Division prior to any payments being made.

2. Identify the reason a subsidy is needed.

3. List the amount of the monthly payment.

4. Identify dates the agreement is in effect.

5. Identify responsibilities of the guardian.

6. Identify under what circumstances the agreement may be amended or terminated and the time period for agreement reviews.

7. Include a provision for a reduction or termination in the amount of the guardianship subsidy in the event a legislative or executive branch action affects the Division's budget or expenditure authority, making it necessary for the Division to reduce or terminate guardianship subsidies or if a regional office determines that reduction is necessary due to regional budget constraints.

8. Include a provision for assignment of benefits to the Office of Recovery Services in accordance with the Office of Recovery Services requirements.

9. Include a provision for re-payment of any financial entitlement made by the Department or Division to the guardian that was incorrectly paid.

R512-308-10. Notification Regarding Changes.

A. The guardian must notify the Division if:

1. There is no longer a need for a guardianship subsidy.

2. The guardian is no longer legally responsible for the support of the child.

3. The guardian is no longer providing any financial support to the child or is providing reduced financial support for the child.

4. The child no longer resides with the guardian.

5. The guardian has a change in address.

6. The child has run away.

7. The guardian is planning to move out-of-state.

R512-308-11. Reviews, Renewals, and Recertifications.

A. Reviews:

1. A guardianship subsidy worker will review each

Guardianship Subsidy Agreement annually. The family situation, child's needs, and amount of the guardianship subsidy payment may be considered.

2. Prior to review, the guardian must complete the Guardianship Subsidy Recertification form provided by the Division to verify that the guardian continues to support the child. If the Recertification form is not received after adequate notice, the guardianship subsidy may be delayed or face possible termination.

B. Renewals:

1. In order for guardianship assistance payments to continue, this agreement shall be renewed at intervals of up to three years until the child's 18th birthday.

2. The Department or Division shall provide written notification to the guardians before the next renewal date and shall supply the guardian with the appropriate forms.

3. The Department, the Division, and the guardian may negotiate the terms of a new agreement at any time. In order to be effective, all new agreements shall be in writing, on a form approved by the Department or the Division, and signed by the parties. Oral modifications or agreements shall bind the Department, the Division, and the guardian.

C. Recertification:

1. In order for guardianship assistance payments to continue, the guardian must recertify annually by completing and submitting the Annual Guardianship Assistance Recertification form to the Department or the Division.

R512-308-12. Appeals/Fair Hearings.

A. When a decision is made to deny, reduce, or terminate a guardianship subsidy, the Division shall send by certified mail a written Notice of Agency Action. The notice shall also include information about how to request a fair hearing.

R512-308-13. Termination.

A. A Guardianship Subsidy Agreement will be terminated if any of the following circumstances occur:

1. The terms of the agreement are concluded.
2. The guardian requests termination.
3. The child reaches age 18 years.
4. The child dies.
5. The guardian parent dies or, in a two parent family, if both guardian parents die.
6. The guardian parents' legal responsibility for the child ceases.
7. The Department or Division determines that the child is no longer receiving financial support from the guardian parent.
8. The child marries.
9. The child enters the military.
10. The child is adopted.
11. The child is placed in foster care.
12. The Department or Division determines that funding restrictions prevent continuation of subsidies for all guardians.

B. A guardianship subsidy payment may be terminated or suspended, as appropriate, if any of the following occur. The decision to terminate or suspend must be made by the regional guardianship subsidy screening committee.

1. The child is incarcerated for more than 30 days.
2. The child is out of the home for more than a 30-day period or is no longer living in the home.
3. The guardian fails to return the annual Recertification form or to complete the renewed Guardianship Subsidy Agreement within five working days of the renewal date.
4. There is a supported finding of child abuse or neglect against the guardian.

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78-3a-103

R523. Human Services, Substance Abuse and Mental Health.
R523-24. Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.
R523-24-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for off premise consumption in the scope of the person's employment with a general food store or similar business.

(3) These rules include:

(a) curriculum content standards,

(b) seminar provider standards,

(c) provider certification process;

(d) the ongoing activities of providers, and

(e) the process for approval, denial, suspension and revocation of provider certification.

R523-24-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "Provider" means an individual or company who has had their curriculum approved and certified by the Division.

(7) "Seminar" means the Off Premise Alcohol Training and Education Seminar.

(8) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually sell or furnish alcoholic beverages to customers for off premise consumption.

(9) "Retail employee" (clerk or supervisor) means any person employed by a general food store or similar business and who is engaged in the sale of or directly supervises the sale of beer to consumers for off premise consumption.

R523-24-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a non-certified provider shall not meet the retailer training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application and curriculum, and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information, and notification of the action taken shall be forwarded in writing to the applicant. If an application for recertification requires additional information or corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-24-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall submit to the Division the name, social security number, expiration date and test results indicating pass or fail, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a retail employee for a period which begins at the completion of the seminar and expires five years from that date.

(3) The provider shall issue a certification card to the retail employee. The card shall contain at least the name of the retail employee and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

R523-24-5. Retail Employee Responsibilities.

(1) A retail employee is required within 30 days of employment by a general food store or similar business to complete and pass the Seminar.

(2) For retail employees who have been certified prior to the implementation of SB 58 Substitute Alcoholic Beverage Amendments - Eliminating Sales to Youth--Knudson 2006, Certification will remain in effect until January, 2008 under the following stipulations:

(a) the provider under which the retailer was trained must submit their curriculum to the Division and obtain certification for the program.

(b) the provider must submit a plan to educate those previously trained about the new administrative penalties outlined in the legislation, and the plan is to be approved by the Division.

R523-24-6. Division Responsibilities.

The Division shall maintain the list of retail employees who have completed the Seminar and provide this information to licensing agencies and licensed general food stores of similar businesses.

R523-24-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least sixty minutes of classroom instruction both for original certification and for any and all re-certifications. The contents of an approved curriculum shall include the following components:

(a) alcohol as a drug;

(b) alcohol's effect on the body and behavior including education on the effects of alcohol on the developing youth brain, which information shall be provided by the Division;

(c) recognizing the problem drinker or signs of intoxication;

(d) an overview of state laws related to responsible beverage sale as determined in consultation with the Department of Alcoholic Beverage Control, which information shall be provided by the Division;

(e) statistics identifying the underage drinking problem, which information provided by the Division;

(f) discussion of criminal and administrative penalties for salesclerks and retail stores for selling beer to underage and

intoxicated persons;

(g) strategies commonly used by minors to gain access to alcohol;

(h) process for checking ID, for example the FLAG system: Feel Look, Ask, Give Back);

(i) policies and procedures to prevent beer purchases by intoxicated individuals; and

(j) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play.

R523-24-8. Examination.

The examination shall include questions from each of the curriculum components identified in Section R523-24-7. The examination will be submitted for approval with the rest of the provider application.

R523-24-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify a provider applicant who:

(a) identifies all program instructors and instructor trainers and certifies in writing that they:

(i) have been trained to present the course material, and

(ii) that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the past five years;

(b) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-24-9(a) for all new instructors;

(c) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and

(d) will establish and maintain course completion records.

R523-24-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without correcting the problem that resulted in the denial, suspension or revocation.

R523-24-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider.

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-24-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the Seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-24-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director shall inform the provider or applicant in writing as required under Section 63-46b-5. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63-46b-5.

KEY: off-premise, training, seminars
August 22, 2006 62A-15-401

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1; and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1.

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Division" means the Division of Services for People with Disabilities;

(f) "Form" means a standard document required by Division rule or other applicable law;

(g) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(h) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(i) "ICF/MR" means Intermediate Care Facility for Persons with Mental Retardation;

(j) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(k) "Region" means one of four geographical areas of the State of Utah referred to as central, eastern, northern or western;

(l) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;

(m) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(n) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(o) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(p) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(q) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

(r) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(s) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the developmental disabilities and mental retardation waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Mental Retardation or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(4)(a)(i) through (iv) and 62A-5-101(4)(b).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared

legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with mental retardation as per 62A-5-101(6) or related conditions.

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered mental retardation or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within each region office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to mental retardation or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver mental retardation or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver for Individuals with Developmental Disabilities or Mental Retardation.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order

to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for developmental disability/mental retardation and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver for Individuals with Physical Disabilities.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury;

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with mental retardation or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824BI, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall

be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver for Individuals with Acquired Brain Injury.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Developmental Disabilities/Mental Retardation Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(2), R539-1-7(2), and R539-1-9(2) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

KEY: human services, disabilities
August 22, 2006 62A-5-103
Notice of Continuation December 18, 2002 62A-5-105

R539. Human Services, Services for People with Disabilities.
R539-9. Supported Employment Pilot Program.
R539-9-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for the Division's pilot program to provide supported employment services for Persons on the Division's Waiting List as specified in R539-2-4.

(2) This rule is authorized by Section 62A-5-103.1

R539-9-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101, and

(2) "T score" means a standardized score used to determine a person's priority on the waiting list.

(3) "Supported Employment" means "competitive work" in integrated work settings or employment in "integrated work" settings where individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities.

(4) "Competitive Work" means employment in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(5) "Integrated Work" means job sites where most employees are not disabled, where a client interacts on a regular basis, in the performance of job duties, with employees who are not disabled. If a client is part of a distinct work group of only individuals with disabilities, the work group should consist of no more than eight individuals.

(6) "Extended Services" means on-going support services and other appropriate services, needed to support and maintain an individual with a most significant disability in employment. They are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment. Extended services are based on a determination of the needs of an eligible individual. Extended services may include natural supports, such as volunteers, family members, co-workers, employer, supervisors, students, and PASS or IRWE.

R539-9-3 Eligibility.

(1) A Person who meets the eligibility requirements listed in Section 62A-5-103.1 may participate in the supported employment pilot program provided that:

(2) the Person agrees to enter services under the conditions listed in Section 62A-5-103.1,

(3) the Person agrees not to use any other Home and Community Based Medicaid Waiver service operated by the Division while participating in the Supported Employment Pilot,

(4) if the person has a Medicaid Card the person may continue to access State Plan, E-Pass and other Medicaid services operated separately from the Division during participation in the pilot,

(5) the person agrees to move off the immediate needs waiting list for supported employment,

(6) the person is found eligible for Division of Rehabilitation Services, Supported Employment funding,

(7) the person agrees to use an approved provider,

(8) the person signs the Supported Employment Pilot Participant Agreement and agrees to follow through with instructions from rehabilitation counselors, services for people with disabilities support coordinators and service brokers and private provider staff,

(9) the person has an Office of Education, Rehabilitation Services, Referral and Services Report form 58 completed signed by a rehabilitation counselor and a support coordinator,

(10) the person agrees that the person's need for extended supported employment services will be met solely by the provision of supported employment services for the duration of the pilot program,

(11) the person agrees to provide information needed by the person's employer to obtain the tax incentive through P.L. 104-188, Federal Welfare to Work, Internal Revenue Service, IRS Form 8850 or Section 59-7-608 or Credit for Employers Who Hire Persons with Disabilities, Form TC-40HD, and

(12) the person has a T score below 50.5.

R539-9-4 Priority.

(1) First priority will be given to Persons on the waiting list for supported employment services who currently receive Division of Rehabilitation Services funding.

(2) Second priority will be given to Persons on the waiting list for supported employment services and no other services.

(3) Third priority will be given to Persons waiting for supported employment and other services.

KEY: disabilities, supported employment
August 22, 2006 62A-5-103.1

R590. Insurance, Administration.
R590-102. Insurance Department Fee Payment Rule.
R590-102-1. Authority.

This rule is adopted pursuant to Subsections 31A-3-103(2) and (4) which require the commissioner to publish the schedule of fees approved by the Legislature and to establish deadlines for payment of each of the various fees.

R590-102-2. Purpose and Scope.

(1) The purpose of this rule is to publish the schedule of fees approved by the legislature, to establish fee deadlines, and to disclose this information to licensees and the public.

(2) The rule applies to all persons engaged in the business of insurance in Utah, to all licensees, to applicants for licenses, registrations, certificates, or other similar filings and for services provided by the department for which a fee is required.

R590-102-3. Definitions.

For the purposes of this rule the following definitions will apply.

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, title insurers, and a prescription drug plan.

(2) "Agency" means:

(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization required to be licensed under Subsections 31A-23a-301, 31A-25-207, and 31A-26-209.

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, and sponsored captive.

(4) "Deadline" means the date or time imposed by statute, order, or rule by which:

(a) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(b) a filing must be received by the department without incurring penalties for late receipt or non-receipt.

(5) "Fee" means an amount set by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(8) "Limited-line agency" includes bail bond and limited-line producer.

(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, surplus line insurer, accredited reinsurer, trustee reinsurer, and health discount program.

(11) "Paper application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.

(12) "Paper filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.

(13) "Received by the department" means:

(a) except as provided in Subsection R590-102-3(11)(b), the date delivered to and stamped received by the department, whether delivered in person or electronically; or

(b) if delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless a statute, rule, or order related to a specific filing or payment provides otherwise.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through 14, shall be due when service is requested, if applicable, otherwise by the due date on the invoice. A non-electronic payment fee will be added to the fee due the department when a payment that can be made electronically is done through a non-electronic method.

(2) Payment.

(a) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action will apply until proper payment is made. A check payment that is dishonored is a violation of this rule.

(b) Cash payments. The department is not responsible for un-receipted cash that is lost or misdelivered.

(c) Electronic payments.

(i) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties resulting from the voided action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See Section 12 for non-electronic processing fees.

R590-102-5. Admitted Insurer Fees.

(1) Annual license fees.

(a) certificate of authority, initial license application - due with license application: $1,002;

(b) certificate of authority - renewal - due by the due date on the invoice: $302;

(c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: $352;

(d) certificate of authority - reinstatement - due with application for reinstatement: $1,002;

(e) certificate of authority - amendments - due with request for amendment: $252;

(f) application for merger, acquisition, or change of control - Form A, due with filing: $2,002. Expenses incurred

for consultant(s) services necessary to evaluate the Form A will be charged to the applicant and due when billed;

(g) redomestication filing - due with filing: $2,002; and

(h) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: $1,002.

(2) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(3) Annual service fee:

(a) Due annually by the due date on the invoice. The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(i) $0 premium volume: no service fee;

(ii) more than $zero but less than $1 million in premium volume: $700;

(iii) $1 million but less than $3 million in premium volume: $1,100;

(iv) $3 million but less than $6 million in premium volume: $1,550;

(v) $6 million but less than $11 million in premium volume: $2,100;

(vi) $11 million but less than $15 million in premium volume: $2,750;

(vii) $15 million but less than $20 million in premium volume: $3,500; and

(viii) $20 million or more in premium volume: $4,350.

(b) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) report filing, all lines of insurance;

(ix) rate filing, all lines of insurance; and

(x) form filing, all lines of insurance.

(c) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusteed Reinsurer, Other Organizations Fees.

(1) Annual license fee.

(a) other organization:

(i) other organization - initial - due with application: $252;

(ii) other organization - renewal - due annually by the due date on the invoice: $202;

(iii) other organization - late renewal - due for any renewal paid after the date on the invoice: $252;

(iv) other organization - reinstatement - due with application for reinstatement: $252;

(v) The annual other organizations initial or renewal fee includes the risk retention group annual statement filing - due annually on May 1.

(b) surplus line insurer, accredited reinsurer, and trusteed reinsurer:

(i) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - initial - due with application $1,002.

(ii) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - renewal - due annually by the due date on the invoice: $302;

(iii) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - late renewal - due for any renewal paid after the date on the invoice: $352;

(iv) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - reinstatement - due with application for reinstatement: $1,002;

(v) The annual initial or renewal surplus line license fee includes the surplus lines annual statement filing for:

(A) U.S. companies - due annually on May 1; and

(B) foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.

(vi) The annual initial or renewal accredited reinsurer and trusteed reinsurer license fee includes the annual statement filing - due annually on March 1.

(2) Annual service fee:

(a) Other organization - due annually by the due date on the invoice: $200.

(b) Surplus lines insurer, accredited reinsurer, and trusteed reinsurer - due annually by the due date on the invoice: $200

(c) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent;

(iii) rate, form, report or service contract filing; and

(iv) any other services provided to the licensee.

(d) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

R590-102-7. Captive Insurer Fees.

(1) Initial license application - due with license application: $202.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: $5,002;

(b) renewal - due by the due date on the invoice: $5,002;

(c) late renewal - due for any renewal paid after the date on the invoice: $5,052;

(d) reinstatement - due with application for reinstatement: $5,052.

R590-102-8. Viatical Settlement Provider Fees.

(1) Annual license fees:

(a) initial - due with application: $1,002;

(b) renewal - due by the due date on the invoice: $302;

(c) late renewal - due for any renewal paid after the date on the invoice: $352;

(d) reinstatement - due with reinstatement application: $1,002.

(2) Annual service fee - due by the due date on the invoice: $600.

(a) The annual service fee includes the following services for which no additional fee is required:
(i) rate, form, report or service contract filing; and
(ii) any other services provided to the licensee.
(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

R590-102-9. Individual Resident and Non-Resident License Fees.

(1) Biennial resident and non-resident full-line individual initial license or renewal fee for two-year period:
(a) initial license fee - due with application: $72:
(b) express initial license fee - due with application: $72;
(c) renewal license fee if renewed prior to renewal deadline - due with renewal application: $72;
(d) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: $122;
(e) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: $122.
(2) Biennial resident and non-resident limited-line individual initial or renewal license fee, for two-year period:
(a) initial license fee - due with application: $47;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: $47;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: $97;
(d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: $97.
(3) Fee for addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: $27.
(4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:
(a) issuance of letter of certification;
(b) issuance of letter of clearance;
(c) issuance of duplicate license;
(d) individual continuing education services; and
(e) other services provided to the licensee.
(5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

R590-102-10. Agency License Fees.

(1) Biennial resident and non-resident agency initial or renewal license per two-year license period for a full-line agency and for a limited-line agency:
(a) initial license fee - due with application: $77;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: $77;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: $127;
(d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: $127.
(2) Fee for addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: $27.
(3) Annual bail bond agency per annual license period:
(a) initial license fee - due with application: $252;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: $252;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: $302; and
(d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: $302.
(4) Annual health insurance purchasing alliance annual license:
(a) initial license fee - due with application: $502;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: $502;
(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: $552; and
(d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: $552.
(5) The annual or biennial initial and renewal agency license fee includes the following services for which no additional fee is required:
(a) issuance of letter of certification;
(b) issuance of letter of clearance;
(c) issuance of duplicate license;
(d) filing of producer designation to agency license - initial;
(e) filing of producer designation to agency license - termination;
(f) filing of amendment to agency license;
(g) filing of power of attorney; and
(h) any other services provided to the licensee.
(6) The annual or biennial initial and renewal agency license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.
(7) Title agency filing (rate, form, or report) - due with filing: $25.

R590-102-11. Continuing Education Fees.

(1) Annual continuing education provider license fees per annual license period:
(a) initial license fee - due with application: $252;
(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: $252;
(c) late renewal license fee if renewed 1 through 60-days after renewal deadline and prior to license lapse - due with renewal application: $302; and
(d) Lapsed license reinstatement fee if reinstated 61 days after renewal deadline - due with application for reinstatement: $302.
(2) Continuing education course post-approval fee - due with request for approval: $5 per credit hour, minimum fee $27.

R590-102-12. Non-electronic Processing Fees.

(1) Paper filing processing fee - assessed on a non-electronic filing when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing - due with each paper filing or by the due date on the invoice: $5.
(2) Paper application processing fee - assessed on a non-electronic application when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application - due with each paper application or by the due date on the invoice: $25.

R590-102-13. Dedicated Fees.

The following are fees dedicated to specific uses:
(1) annual fraud assessment fee - due by the due date on the invoice;
(2) annual title assessment fee - due by the due date on the invoice;
(3) relative value study book fee - due when book

purchased or by invoice due date: $12; and
(4) mailing fee for books - due if book is to be mailed to purchaser: $3.

R590-102-14. Electronic Commerce Dedicated Fees.
(1) E-commerce and internet technology services fee:
(a) admitted insurer and surplus lines insurer - due with the annual initial, annual renewal, or reinstatement application: $75;
(b) captive insurer - due with the annual initial, annual renewal, or reinstatement application: $250;
(c) other organization and viatical settlement provider - due with the annual initial, annual renewal, or reinstatement application: $50;
(d) continuing education provider - due with the annual initial, annual renewal, or reinstatement application: $20;
(e) agency - due with the biennial initial, biennial renewal, or reinstatement application: $10;
(f) individual - due with the biennial initial, biennial renewal, or reinstatement application: $5.
(2) Database access fee - due when the department's database is accessed to input or acquire data: $3 per transaction.

R590-102-15. Other Fees.
(1) photocopy fee - per page: $.50.
(2) Complete annual statement copy fee - per statement: $42.
(3) Fee for accepting service of legal process: $12.
(4) Fees for production of information lists regarding admitted insurers, other organizations, individuals, agencies, or other information that can be produced by list:
(a) printed list: $1 per page;
(b) electronic list:
(i) 1 to 500 records: $52; and
(ii) 501 or more records: $.11 per record.
(5) Returned check fee: $20.
(6) Workers compensation loss cost multiplier schedule: $5.
(7) Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: $35.

R590-102-16. Separability.
If any provision of this rule or its 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 shall not be affected.

KEY: insurance
August 29, 2006 31A-3-103
Notice of Continuation February 21, 2002

R590. Insurance, Administration.
R590-178. Securities Custody.
R590-178-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Utah Insurance Code Sections 31A-2-201, 31A-2-206, and 31A-4-108.

R590-178-2. Purpose and Scope.

The purpose of this rule is to authorize insurers to utilize modern systems for holding and transferring securities without physical delivery of securities certificates. This rule applies to all Utah domestic insurers.

R590-178-3. Definitions.

As used in this rule:

A. "Adequately Capitalized" means the capital threshold level determined by the standards adopted by United States banking regulators.

B. "Agent" means a bank or trust company that maintains an account in its name in a clearing corporation or is a member of the Federal Reserve System through which a custodian participates in a clearing corporation or the Federal Reserve book-entry system.

C. "Clearing Corporation" means a corporation, as defined in Subsection 70A-8-101(1)(e), organized for the purpose of effecting transactions in securities by computerized book-entry.

D. "Custodian" means a national bank or state bank that is, at all times during which it acts as custodian, no less than adequately capitalized or a trust company with minimum net worth of $1,500,000 at all times during which it acts as a custodian. Custodians shall be licensed by the United States or any state thereof, and shall be regularly examined by the licensing authority.

E. "Federal Reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities.

R590-178-4. Rule.

A. An insurer may, by written agreement with a custodian, provide for the custody of its securities. The securities may be held by the custodian or be held in a clearing corporation or the Federal Reserve book-entry system. Securities so held are referred to in this rule as "Custodial Securities."

B. Agreements shall be in writing and shall be authorized by a resolution of the Board of Directors of the insurer or by a committee authorized pursuant to 31A-5-412. The terms of the agreement shall comply with the following:

1. Certificated securities held by the custodian shall be held separate from the securities of the custodian and its customers or in a fungible bulk of securities as part of a Filing of Securities by Issue arrangement.

2. Securities held in fungible bulk by the custodian and securities in a clearing corporation or in the Federal Reserve book-entry system shall be separately identified on the custodian's books and records as owned by the insurer. The records shall identify which custodial securities are held by the custodian and which securities are in a clearing corporation or in the Federal Reserve book-entry system. If the securities are in a clearing corporation or in the Federal Reserve book-entry system, the records shall identify the location of the securities, and if in a clearing corporation, the name of the clearing corporation, and if through an agent, the name of the agent.

3. All custodial securities that are registered shall be registered in the name of the insurer or in the name of a nominee of the insurer or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

4. Custodial securities shall be held subject to the instructions of the insurer, except that custodial securities used to meet the deposit requirements set forth in Subsection 31A-2-206(2) shall be subject to the Insurance Commissioner's exclusive direction until control is released by the commissioner and shall not be withdrawn by the insurer without the approval of the Insurance Commissioner.

5. The custodian shall be required to send, or cause to be sent, to the insurer confirmations of all transfers of custodial securities to or from the account of the insurer and reports of holdings of custodial securities at such times and containing such information as may be reasonably requested by the insurer.

6. During the course of the custodian's regular business hours, an officer or employee of the insurer, an independent accountant selected by the insurer, or a representative of the Insurance Department shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodial securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurer.

7. Upon written request from the insurer, the custodian and its agents shall be required to send to the insurer:

(a) a copy of the most recent available information on the internal controls of the clearing corporation or the Federal Reserve system; and

(b) a copy of the most recent available outside auditor report that addresses the custodian's or its agent's internal accounting control of custodial securities.

8. The insurer shall identify and require the custodian to maintain records sufficient to meet the insurer's regulatory reporting requirements.

9. The custodian shall provide, upon written request from an appropriate officer of the insurer, the appropriate affidavits with respect to custodial securities. These shall be substantially in the form of Custodian Affidavits, Form A, 298-6, Form B, 298-7, and Form C, 298-8, published by NAIC Model Regulation Service.

a. "Form A" is to be used by a custodian bank or trust company where securities entrusted to its care have not been redeposited elsewhere;

b. "Form B" is to be used in instances where a custodian bank or trust company maintains securities on deposit with The Depository Trust Company or like entity; and

c. "Form C" is to be used where ownership is evidenced by book entry at a Federal Reserve Bank.

10. The custodian shall be obligated to indemnify the insurer for any loss of custodial securities occasioned by the negligence or dishonesty of the custodian's officers or employees, and for burglary, robbery, holdup, theft and mysterious disappearance, including loss by damage or destruction. In the event that there is loss of indemnified custodial securities, the custodian shall promptly replace the securities or their fair market value.

11. The agreement may provide that the custodian will not be liable for failure to take an action required under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war, whether declared or not and including existing wars, revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause beyond its reasonable control.

12. In the event that the custodian gains entry in a clearing corporation or in the Federal Reserve book-entry system through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to provisions of liability for loss of custodial securities substantially similar to the liability provisions applicable to the

custodian.

13. Banks shall be required to report their capital threshold level, as determined by the standards adopted by United States banking regulators, to the insurer and the Insurance Commissioner. The bank's current capital threshold level shall be reported on enactment of the agreement and within 45 days after the end of each calendar year.

14. Trust companies shall be required to provide current annual financial statements to the insurer and the Insurance Commissioner within 45 days after the end of each calendar year.

R590-178-5. Penalties and Prohibitions.

A. Insurers found to be or to have been in violation of this rule shall be subject to fine, suspension, revocation of license or other penalties permitted by Section 31A-2-308.

B. Insurers are not authorized to provide for the custody of their securities except as granted in this rule. Custodial securities held in violation of this rule shall be disregarded in determining and reporting the financial condition of an insurer.

R590-178-6. Separability.

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions may not be affected.

KEY: insurance law
October 1, 1996 31A-4-108
Notice of Continuation August 7, 2006

R590. Insurance, Administration.
R590-207. Health Agent Commissions for Small Employer Groups.
R590-207-1. Authority.

This rule is issued and based upon the authority granted the commissioner under Sections 31A-2-201(3)(a) and 31A-30-104(6).

R590-207-2. Purpose.

The purpose of this rule is to establish guidelines relating to commission structure for small group health insurance agent in the small employer group market that affect access to health insurance coverage for small employer groups.

R590-207-3. Applicability.

This rule applies to all licensed insurers doing health insurance business under Title 31A, Chapter 30, the Individual and Small Employer Health Insurance Act.

R590-207-4. Definitions.

The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

R590-207-5. Commission Schedule Policy.

A health insurance carrier shall not structure agent commission rates that, directly or indirectly, create a restriction, hindrance, or barrier to access to coverage for the smallest group identified in the commission schedule.

The commission for the smallest size group in the commission schedule may not be designed to avoid, directly or indirectly, the requirements of guarantee issue or renewal in the marketing of health insurance to small business owners.

TABLE

ACCEPTABLE EXAMPLES:

A commission structure that is in compliance would be: an employer group size 2-5 would receive a 10% commission, an employer group size 6-25 would receive a 9% commission, and an employer group size 26-50 would receive a 7% commission.

Another example of an acceptable commission schedule would be: for employer group size 2-5 the commission would be $20/Per Member Per Month(PMPM), for employer group size 6-25 the commission would be $18/PMPM, and for employer group size 26-50 the commission would be $16/PMPM.

Case Size in Lives	Rate Up	Comm. Rate
2-24	< 22	12%
2-24	22% to <44%	8%
2-24	44% to <65%	8%
2-24	65% to 85%	7%
25-50		8%

UNACCEPTABLE EXAMPLE:

Case Size in Lives	First Year	Renewal
Up to 3	3%	3%
4-14	8%	8%
15-29	7%	7%
30-50	6%	6%

Case Size in Lives	Rate Up	Comm. Rate
2-24	< 22%	12%
2-24	22% to <44%	10%
2-24	44% to <65%	8%
2-24	65% to 85%	6%
25-50		8%

R590-207-6. Penalties.

Any carrier with a commission structure that is not in compliance with this rule after the effective date of this rule will be considered in violation of this rule and will be subject to the penalties provided for in Section 31A-2-308.

R590-207-7. Compliance Date.

This rule is in effect on the date stated in the Notice of Effective Date form relating to this rule that the department files with the Division of Administrative Rules (the "effective date"). The effective date will follow a period of 30 days during which interested parties will have time to prepare to be in compliance with this rule. It will also be the date on which the department will begin enforcing this rule. The Notice of Effective Date is published in the Utah State Bulletin, a publication of the Division of Administrative Rules. The Utah State Bulletin is found at the website, http://www.rules.state.ut.us/. In addition, the effective date may be found at the department's website, http://www.insurance.utah.gov by clicking on INDUSTRY RESOURCES and then RULES and scrolling down to the appropriate reference to the rule.

R590-207-8. Severability.

If any provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance law
September 30, 2001 31A-2-201
Notice of Continuation September 1, 2006 31A-2-202

R590. Insurance, Administration.
R590-230. Suitability in Annuity Transactions.
R590-230-1. Authority.

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for recommendations and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

R590-230-2. Purpose.

(1) The purpose of this rule is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this rule.

R590-230-3. Scope.

(1) This rule shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the recommended purchase or exchange.

(2) Unless otherwise specifically included, this rule shall not apply to recommendations involving:

(a) direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this rule; and

(b) contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(iii) a government or church plan defined in IRC Section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under IRC Section 457;

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) formal prepaid funeral contracts.

R590-230-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Annuity" means:

(a) an annuity as defined in Section 31A-1-301; and

(b) a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(2) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

R590-230-5. Duties of Insurers and of Insurance Producers.

(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

(a) the consumer's financial status;

(b) the consumer's tax status;

(c) the consumer's investment objectives; and

(d) such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(3)(a) Except as provided under Subsection (3)(b), neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection (1) related to any recommendation if a consumer:

(i) refuses to provide relevant information requested by the insurer or insurance producer;

(ii) decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(iii) fails to provide complete or accurate information.

(b) An insurer or insurance producer's recommendation subject to Subsection (3)(a) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(4)(a) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established and maintained by complying with Subsections (4)(c) to (4)(e) or shall establish and maintain such a system, including:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this rule.

(b) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this rule, or shall establish and maintain such a system, including:

(i) maintaining written procedures; and

(ii) conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule.

(c) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection (4)(a) with respect to insurance producers under contract with or employed by the third party.

(d) An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection (4)(c) is performing the functions required under Subsection (4)(a) and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(i) the insurer annually obtains from a third party's senior manager, who has responsibility for the delegated functions, a certification that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(ii) the insurer, based on reasonable selection criteria, periodically selects third parties contracting under Subsection (4)(c) for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(e) An insurer that contracts with a third party pursuant to Subsection (4)(c) and that complies with the requirements to supervise in Subsection (4)(d) of this subsection shall have

fulfilled its responsibilities under Subsection (4)(a).

(f) An insurer, general agent or independent agency is not required by Subsection (4)(a) or (4)(b) to:

(i) review, or provide for review of all insurance producer solicited transactions; or

(ii) include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(g) A general agent or independent agency contracting with an insurer pursuant to Subsection (4)(c), shall promptly, when requested by the insurer pursuant to Subsection (4)(d), give a certification as described in Subsection (4)(d) or give a clear statement that the third party is unable to meet the certification criteria.

(h) No person may provide a certification under Subsection (4)(d)(i) unless:

(i) the person is a senior manager with responsibility for the delegated functions; and

(ii) the person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers (NASD) Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this rule.

R590-230-6. Mitigation of Responsibility.

(1) The commissioner may order:

(a) an insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of this rule;

(b) an insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule; and

(c) a general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this rule.

(2) Any applicable penalty under 31A-2-308 for a violation of Subsection R590-230-5.(1), (2), or (3)(b) may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

R590-230-7. Records.

Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for the current calendar year plus three years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

R590-230-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

R590-230-9. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: insurance, annuity suitability
August 29, 2006 **31A-2-201**

R651. Natural Resources, Parks and Recreation.
R651-224. Towed Devices.
R651-224-1. Observer Required.

The operator of a vessel which is towing a person on water skis or other devices shall be responsible for maintaining a safe course with proper lookout. The progress of the person under tow shall be reported to the vessel operator by the observer.

R651-224-2. Unlawful Methods of Towing.

No person shall operate a motorboat or have the engine of a motorboat run idle while a person is occupying or holding onto the swim platform, swim deck, swim step or swim ladder of the motorboat or while a person is being towed in a non-standing position within 20 feet of the vessel. These restrictions do not apply when a person is occupying the swim platform, swim deck, swim step or swim ladder while assisting with the docking or departure of the motorboat, while exiting or entering the motorboat, or when a motorboat is engaged in law enforcement activity.

R651-224-3. Flag Required.

The operator of a vessel shall be responsible for a flag to be displayed by the observer in a visible manner to other boaters in the area while the person to be towed is in the water, either preparing to be towed or finishing a tow. The flag shall be international orange at least 12 inches square and mounted on a handle.

R651-224-4. PFD to be Worn.

The operator of a vessel which is towing a person(s) on water skis or other devices shall require each person who is water skiing or using other devices to wear a United States Coast Guard approved personal flotation device (PFD), except an inflatable PFD may not be used.

R651-224-5. Capacity of Towing Vessel.

The operator of a vessel which is towing a person(s) on water skis or other devices shall use a vessel with sufficient carrying capacity, as defined by the manufacturer, for the occupant(s) onboard and the person(s) being towed.

R651-224-6. No Towing in Marinas.

The operator of a vessel shall not tow a person(s) in or on any towed device within a wakeless area surrounding a developed marina or launch ramp.

KEY: boating, water skiing
August 22, 2006 73-18-15
Notice of Continuation February 13, 2006

R651. Natural Resources, Parks and Recreation.
R651-406. Off-Highway Vehicle Registration Fees.
R651-406-1. Annual Registration Fee.
The annual registration fee is $17.

R651-406-2. Fee For Duplicate Registration.
The fee for a duplicate certificate of registration is $3.

R651-406-3. Fee For Duplicate Numbered Stickers.
The fee for duplicate numbered stickers is $5.

KEY: off-highway vehicles
August 18, 2006 41-22-8
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-601. Definitions as Used in These Rules.
R651-601-1. Division.
"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.
"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.
"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.
"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.
"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.
"Park area" means any individual park property in the park system.

R651-601-7. Manager.
"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.
"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.
"Permit" means written authorization by a park representative.

R651-601-10. Posted.
"Posted" means displayed printed instruction or information.

R651-601-11. Person.
"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-12. Commercial Activity.
"Commercial Activity" means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:
(1) sales of goods or merchandise.
(2) rentals of equipment.
(3) collection of entrance or admission fees.
(4) collection of storage or use fees.
(5) sales of services.
(6) delivery service of rental equipment to the park area by a rental agency as part of a customer rental agreement.

R651-601-13. Commercial Gain.
"Commercial gain" means compensation in money, services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. Concession Contract.
"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

R651-601-15. Special Use Permit.
"Special Use Permit" means a temporary authorization or concession, not to exceed one year, for the purpose of conducting commercial activity.

R651-601-16. Cooperative Agreement.
A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

R651-601-17. Definitions.
(1) "Motorized Transportation Device" means any motorized device used as a mode of transportation that includes: "Electric assisted bicycles", "Mopeds", "Motor Assisted scooters", "motorcycles", "motor-driven cycle", and "personal motorized mobility device" as defined in Utah State Code 41-6-1. "Motorized wheelchairs" are also included under this definition.

KEY: parks, off-highway vehicles
August 22, 2006 41-22-10
Notice of Continuation October 23, 2003 63-11-3
63-11-17

R651. Natural Resources, Parks and Recreation.
R651-606. Camping.
R651-606-1. Permit Required for Camping in Undeveloped Areas.

No person shall camp in undeveloped locations of a park area without proper permit.

R651-606-2. Reserved Campsites may not be Taken.

No person shall occupy or otherwise use a campsite when it is occupied or reserved for another person.

R651-606-3. Maximum Occupancy of Campsites.

Unless authorized by a park representative, individual campsites shall not be occupied by more than two vehicles and eight persons.

R651-606-4. Payment Required before Occupancy of Campsite.

No person shall occupy camping facilities prior to payment of required fees.

R651-606-5. Time-Limit in Campsite may not be Exceeded.

No person shall exceed the limitation on the length of time persons may camp within a park area as approved in the park system fee schedule (see R651-611).

R651-606-6. Use of Showers.

Showers may only be used by campers with camping or shower authorization permits and only in accordance with posted restrictions.

R651-606-7. Camping only in Designated Areas.

All persons shall park or camp only in areas designated for those purposes.

R651-606-8. Time by which Campsites shall be Vacated.

All persons shall vacate the campsite by 2:00 p.m. of the last day of the camp permit.

R651-606-9. Clean-up of Campsite Required.

All persons shall remove all personal property, debris and litter prior to departing the site.

R651-606-10. Quiet Hours.

No person shall operate or allow the operation of a generator, audio device; make or allow the making of unreasonable noises from 10:00 p.m. to 7:00 a.m., except in the following area(s): Coral Pink Sand Dunes State Park, which shall be from 10:00 p.m. to 9:00 a.m.

KEY: parks
August 21, 2006 **63-11-17(8)**
Notice of Continuation October 23, 2003

R651. Natural Resources, Parks and Recreation.
R651-633. Special Closures or Restrictions.
R651-633-1. Emergency Closures or Restrictions.

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager to protect public safety or park resources.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 26-30-2;

(4) Jordan River State Park - Possession or consumption of any alcoholic beverage is prohibited;

(5) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 26-30-2;

(6) Palisade State Park - Cliff diving is prohibited;

(7) Red Fleet State Park - Cliff diving is prohibited; and

(8) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) Jenny's Canyon Trail is closed annually from March 15 to June 1,

(c) Johnson's Arch Canyon access is closed annually from March 15 to October 31 by permit or guided walk, the canyon is open from November 1 to March 14.

(d) Black Rocks Canyon is closed annually from March 15 to June 30,

(e) West Canyon climbing routes are closed annually from February 1 to June 1 to protect nesting raptors.

(f) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 26-30-2.

(g) Hang gliding, para gliding and B.A.S.E. jumping is prohibited.

KEY: parks
August 21, 2006 **63-11-17(2)(b)**
Notice of Continuation May 3, 2004

R652. Natural Resources; Forestry, Fire and State Lands.
R652-123. Exemptions to Wildland Fire Suppression Fund.
R652-123-100. Authority.

This rule implements Subsection 65A-8-6.4(1) which authorizes the Division of Forestry, Fire and State Lands to make rules to administer the Wildland Fire Suppression Fund, including rules to determine whether an acres or real property is eligible for the exemption provided in Subsection 65A-8-6.2(2)(b).

R652-123-200. Definitions.

1. "Accessible" - an area is considered accessible if the roads are paved, and are 20 feet wide, and has a overhead clearance of 13 1/2 feet and has a maximum slope of 10%. A Type I fire engine, as defined in this rule, must be able to access and negotiate the roads and work safely throughout the entire area.

2. "Hydrant system" - A water distribution system consisting of pipes, hydrants, and pumps used for fire suppression, with the following specifications:

a. A six inch supply feed

b. A capacity of delivering 1000 gallons per minutes at 20 pounds per square inch for two hours at each hydrant. Flow will be verified with flow test documentation.

c. Maximum hydrant spacing is no greater than 500 lineal feet.

3. "Fire Barrier" - continuous, delineated, unbroken separation of land between the wildland and the nominated area, clear of wildland vegetation where wildland fire will not carry, and that is a permanent, definable, and substantial separation. Such barriers can include but is not limited to irrigated golf courses, lakes, highways, rivers and others deemed adequate by the Division.

4. "Predominant Vegetation" - type of vegetation that provides the majority of plant cover in an area such as woody shrubs, grass, trees.

5. "Type I fire engine" - A vehicle used for fire suppression that meets National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus.

6. "Urban Vegetation" - vegetation that is managed, maintained, and irrigated in a manner that will not allow for the propagation and spread of a fire over the landscape during anytime of the year.

7. "Wildland" - an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.

8. "Wildland Vegetation" - naturally occurring vegetation that is not managed, maintained and irrigated or vegetation that when cured (low live foliar moisture content), may be capable of carrying fire over the landscape.

9. "Wildland Urban Interface" -A geographical area where structures and other human development meets or intermingles with undeveloped wildland.

R652-123-300. Nomination of Exempt Areas.

For the covered year of 2007, a county may request that an area be exempt from its assessed payment into the Wildland Fire Suppression Fund by petitioning the Division on a Division approved form (Petition for Area Exemption) by September 1, 2006. For all subsequent years, the county's petition must be filed by July 1 of the year prior to the March 15 payment date. The petition shall include:

a. A description of the area including:

i. an ortho-photo quad of the area to be considered

ii. A topographic map of the area to be considered

b. An explanation with supporting documentation indicating the area meets the criteria to be exempt, with fuels, response time, access, and water availability addressed.

c. Detailed documentation of the taxable value of real property in the area to be exempt.

d. A signature of a county commissioner.

R652-123-400. Qualifying and Evaluating Exempt Areas.

1. The Division shall check for completeness of the Petition for Area Exemptions and acknowledge the receipt of the petition by date stamp.

2. The Division shall inspect the area in the petition and evaluate the nomination using the following criteria:

a. The area must be in the unincorporated area of the county, and

b. The predominant vegetation in the area is considered urban vegetation or if the predominant vegetation is wildland vegetation, there exists a fire barrier as defined in this rule between the nominated area and the wildlands, and

c. The response time of the local fire department having jurisdiction is fifteen minutes or less, and

d. The area is accessible as defined in this rule throughout the entire area such that a Type I fire engine can maneuver and work safely anywhere in the nominated area, and

e. The area is serviced by a hydrant system as defined in this rule.

R652-123-500. Notification of Exempt Areas.

1. The Division will make a final determination of exempt areas.

2. For all requests made by September 1, 2006 for the following year, the Division will notify the county commission by November 30, 2006 of those areas that were determined to be exempt, and which areas were determined to be non-exempt. For all subsequent years, the Division will give such notification by September 30.

3. The county may appeal the decision as defined in R652-8 Adjudicative Proceedings.

4. County expenditures for fire suppression that occur within areas that have been designated as exempt, are not considered Normal Fire Suppressions Costs as defined in R652-121-200(2) and will not be calculated as part of the county's approved fire suppression budget.

R652-123-600. Reporting.

Counties shall provide an annual report to the Division by March first listing:

a. A detailed listing of the taxable value of real property (land and buildings) in the exempt area of the county,

b. The total acreage of unincorporated land and the total exempt acreage of unincorporated land.

c. Any annexations of unincorporated lands by a town or city

d. County expenditures for fire suppression that occur within areas that have been approved by the Division as exempt

e. Existing exemptions from previous years

KEY: exemptions to wildland fire suppression fund, administrative procedures
August 28, 2006 **65A-8-6.4(1)**
65A-8-6.2(2)(b)

R657. Natural Resources, Wildlife Resources.
R657-6. Taking Upland Game.
R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the Upland Game Proclamation of the Wildlife Board for taking upland game.

R657-6-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Falconry" means the sport of taking quarry by means of a trained raptor.

(d) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(e) "Migratory game bird" means, for the purposes of this rule, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(f) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(g) "Upland game" means pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, White-tailed Ptarmigan, and the following migratory game birds: Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may call the telephone number or register online as published in the proclamation of the Wildlife Board for taking upland game to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to provide their small game or combination license with the HIP registration number recorded, showing they have registered and provided information for the HIP program.

R657-6-4. Permits for Band-tailed Pigeon, Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.

(1)(a) A person may not take or possess:

(i) Band-tailed Pigeon without first obtaining a Band-tailed Pigeon permit;

(ii) Sage-grouse without first obtaining a Sage-grouse permit;

(iii) Sharp-tailed Grouse without first obtaining a Sharp-tailed Grouse permit; or

(iv) White-tailed Ptarmigan without first obtaining a White-tailed Ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Sage-grouse permit beginning on the date published in the proclamation of the Wildlife Board for taking upland game, if any permits are remaining.

(2)(a) A limited number of two-bird Sage-grouse permits are available in the areas published in the proclamation of the Wildlife Board for taking upland game.

(b) A Sage-grouse permit may only be used in one of the open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sage-grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sage-grouse permit request forms must be submitted with a handling fee.

(3)(a) A limited number of two-bird, Sharp-tailed Grouse permits are available.

(b) A Sharp-tailed Grouse permit may only be used in one of open areas as published in the proclamation of the Wildlife Board for taking upland game.

(c) Sharp-tailed Grouse permits will be issued on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game free of charge.

(d) Sharp-tailed Grouse permit request forms must be submitted with a handling fee.

(4)(a) Band-tailed Pigeon and White-tailed Ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

(5) Sage-grouse, Sharp-tailed Grouse, Band-tailed Pigeon and White-tailed Ptarmigan permit forms are available from Division offices and through the Division's Internet address.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Applications will be available from Division offices and license agents. Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking upland game.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill Crane is published in the proclamation of the Wildlife Board for taking upland game.

(2)(a) Applications completed incorrectly or received after the date prescribed in the upland game proclamation may be rejected.

(b) If an error is found on the application, the applicant may be contacted for correction.

(3)(a) Late applications, received by the date published in the proclamation of the Wildlife Board for taking upland game, will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The handling fee will be used to process the late application. Any license fees submitted with the application will be refunded.

(c) Late applications, received after the date published in the proclamation of the Wildlife Board for taking upland game, shall not be processed and shall be returned to the applicant.

(4) Group applications for Sandhill Crane will not be accepted.

(5)(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person may not apply more than once annually.

(6) Each application must include:

(a) a $5 nonrefundable handling fee; and

(b) the small game or combination license fee, if it has not yet been purchased.

(7) A small game license or combination license may be purchased before applying, or the small game license or combination license will be issued upon successfully drawing a permit. Fees must be submitted with the application.

(8) The posting date of the drawing results is published in the proclamation of the Wildlife Board for taking upland game.

(9) Any permits remaining after the drawing are available by mail-in application on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking upland game.

(10) To apply for a resident permit or license, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

(12)(a) An applicant may withdraw their application for the Sandhill Crane Drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking upland game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) An applicant may reapply in the Sandhill Crane Drawing provided:

(i) the original application is withdrawn;

(ii) the new application is submitted with the request to withdraw the original application;

(iii) both the new application and request to withdraw the original application are received by the initial application deadline; and

(iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fee will not be refunded.

(13)(a) An applicant may amend their application for the Sandhill Crane Drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

R657-6-6. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic;

(iii) a person hunting upland game on a temporary game preserve as defined in Rule R657-5 may not use or possess any broadheads unless that person possesses a valid big game archery permit for the area being hunted;

(iv) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in Rule R657-5; and

(v) Sandhill Crane may be taken with any size of nontoxic shot.

(b) Crossbows are not legal archery equipment for taking upland game, except as provided in Rule R657-12.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-6-7. Nontoxic Shot.

(1) Only nontoxic shot may be used to take Sandhill Crane.

(2) Except as provided in Subsection (3), nontoxic shot is not required to take any species of upland game, except Sandhill Crane.

(3) A person may not possess or use lead shot or any other shot that has not been approved by the U.S. Fish and Wildlife Service while on federal refuges or the following state waterfowl or wildlife management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

R657-6-8. Use of Firearms and Archery Tackle on State Wildlife Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Bud Phelps, Castle Dale, Huntington, James Walter Fitzgerald, Mallard Springs, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, Richfield, Roosevelt, Scott M. Matheson Wetland Preserve, Vernal, and Willard Bay.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-9. Use of Firearms and Archery Tackle on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-10. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Band-tailed Pigeon, Mourning Dove, White-winged Dove, and Sandhill Crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge, pheasant, quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the proclamation of the Wildlife Board for taking upland game.

(2) Pheasant and quail may not be taken prior to 8 a.m. on the opening day of the pheasant and quail seasons.

(3) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-11. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas, except those areas designated open to hunting by the Division of Parks and Recreation in Rule R651-614-4.

(2) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns or archery tackle is prohibited within one quarter mile of the above stated areas.

R657-6-12. Falconry.

(1)(a) Falconers must obtain an annual small game or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the proclamation of the Wildlife Board for taking upland game.

R657-6-13. Baiting.

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any upland game, except Sandhill Crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-6-14. Use of Motorized Vehicles.

Motorized vehicle travel on all state wildlife management areas is restricted to county roads and improved roads that are posted open.

R657-6-15. Possession of Live Protected Wildlife.

A person may not possess live, protected wildlife. Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

R657-6-16. Tagging Requirements.

(1) The carcass of a Sandhill Crane, sage grouse, or Sharp-tailed Grouse must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill Crane, sage grouse, or Sharp-tailed Grouse after any of the notches have been removed from the tag or the tag has been detached from the permit.

R657-6-17. Identification of Species and Sex.

One fully feathered wing must remain attached to each upland game bird and migratory game bird taken while it is being transported to allow species identification.

R657-6-18. Waste of Upland Game.

A person shall not kill or cripple any upland game without making a reasonable effort to retrieve the animal.

R657-6-19. Utah Pheasant Project.

(1) Boy Scouts, Girl Scouts, or youth enrolled in 4-H or FFA may collect and rear pheasants from eggs in nests destroyed by normal hay mowing operations. The 4-H club leader, FFA adviser or Scout Master shall first apply for and obtain a certificate of registration for this activity.

(2) Landowners or operators of mowing equipment may collect the eggs and possess them for no more than 24 hours for pick up by a person with a certificate of registration.

(3) Pheasants must be released by 16 weeks of age.

(4) These pheasants remain the property of the state of Utah.

R657-6-20. Use of Dogs.

(1) Dogs may be used to locate and retrieve upland game during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the Division.

(3) State wildlife management and waterfowl management areas are listed under Sections R657-6-9 and R657-6-10.

R657-6-21. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake International Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, Syracuse City, West Jordan, and West Valley City are closed to the discharge

of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas and federal refuges are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-6-22. Live Decoys and Electronic Calls.

A person may not take migratory game birds by the use or aid of live decoys, recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds.

R657-6-23. Shipping or Exporting.

(1) No person may transport upland game by the Postal Service or a common carrier unless the package or container has the name and address of the shipper and the consignee and an accurate statement of the numbers of each species of birds contained therein clearly and conspicuously marked on the outside of the container.

(2) A shipping permit issued by the Division must accompany each package containing upland game within or from the state.

(3) A person may export upland game or their parts from Utah only if:

(a) the person who harvested the upland game accompanies it and possess a valid license or permit corresponding to the tag, if applicable; or

(b) the person exporting the upland game or its parts, if it is not the person who harvested the upland game, has obtained a shipping permit from the Division.

R657-6-24. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-25. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the proclamation of the Wildlife Board for taking upland game.

KEY: wildlife, birds, rabbits, game laws
August 8, 2006 23-14-18
Notice of Continuation July 8, 2005 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Common Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "CFR" means the Code of Federal Regulations.

(c) "Live decoys" means tame or captive ducks, geese or other live birds.

(d) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(e) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(f) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(g) "Transport" means to ship, export, import or receive or deliver for shipment.

(h) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(i) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person 12 through 15 years of age.

R657-9-4. Permit Applications for Swan.

(1) Applications for swan permits are available from license agents, division offices, and through the division's Internet address. Residents and nonresidents may apply.

(2)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(3)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The handling fee will be used to process the late application. Any license fees submitted with the application shall be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be processed and will be returned.

(4) A person may obtain only one swan permit each year

(5) A person may not apply more than once annually.

(6) Group applications are not accepted.

(7) A small game or combination license may be purchased before applying, or the small game or combination license will be issued to the applicant upon successfully drawing a permit.

(8) Each application must include:

(a) a nonrefundable handling fee; and

(b) the small game or combination license fee, if the license has not yet been purchased.

R657-9-5. Drawing.

(1)(a) Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2)(a) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(d) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(3)(a) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-7(3)(b).

(b) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake division office.

(c) Handling fees will not be refunded.

(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-9-6. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-7. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within ten days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

R657-9-8. Purchase of License by Mail.

(1) A person may purchase a license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-9-9. Firearms.

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

R657-9-10. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

(d) on the Scott M. Matheson wetland preserve.

R657-9-11. Use of Firearms on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

(a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;

(b) Daggett County - Brown's Park;

(c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;

(d) Emery County - Desert Lake;

(e) Millard County - Clear Lake;

(f) Tooele County - Timpie Springs;

(g) Uintah County - Stewart Lake;

(h) Utah County - Powell Slough;

(i) Wayne County - Bicknell Bottoms; and

(j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-9-12. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-13. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-14. Motorized Vehicle Access.

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-15. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-16. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-17. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

R657-9-18. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-19. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-20. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-21. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-22. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-23. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-24. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-25. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

R657-9-26. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-27. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-28. Migratory Bird Preservation Facilities.

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name

of the person from whom the bird was obtained, and show:
(i) the number of each species;
(ii) the location where taken;
(iii) the date such birds were received;
(iv) the name and address of the person from whom such birds were received;
(v) the date such birds were disposed of; and
(vi) the name and address of the person to whom such birds were delivered; or
(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.
(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.
(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-29. Importation.
A person may not:
(1) import migratory game birds belonging to another person; or
(2) import migratory game birds in excess of the following importation limits:
(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;
(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;
(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-30. Use of Dogs.
(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.
(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

R657-9-31. Season Dates and Bag and Possession Limits.
(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.
(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-32. Closed Areas.
(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.
(2) A person may not participate in activities that are posted as prohibited.
(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:
(a) Brown's Park - That part adjacent to headquarters.
(b) Clear Lake - Spring Lake.
(c) Desert Lake - That part known as "Desert Lake."
(d) Farmington Bay - Headquarters area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.
(e) Ogden Bay - Headquarters area.
(f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."
(g) Salt Creek - That part as posted known as "Rest Lake."
(h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.
(i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.
(j) State Parks
Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.
(k) Great Salt Lake Marina and adjacent areas as posted.
(l) Millard County
Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.
(m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

R657-9-33. Shooting Hours.
(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.
(2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-34. Falconry.
(1) Falconers must obtain a valid small game or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.
(2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

R657-9-35. Migratory Game Bird Harvest Information Program (HIP).
(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.
(2)(a) A person must call the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.
(b) A person must write their HIP registration number on their current year's hunting license.
(3) Any person obtaining a HIP registration number will be required to provide their:
(a) hunting license number;
(b) hunting license type;
(c) name;
(d) address;
(e) phone number;
(f) birth date; and
(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-36. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

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50 CFR part 20

R657. Natural Resources, Wildlife Resources.
R657-10. Taking Cougar.
R657-10-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(c) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(e) "Green pelt" means the untanned hide or skin of any cougar.

(f) "Kitten" means a cougar less than one year of age.

(g) "Limited entry hunt" means any hunt listed in the hunt tables of the proclamation of the Wildlife Board for taking cougar, which is identified as limited entry and does not include harvest objective hunts.

(h) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits and sportsman permits.

(i) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(j) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

R657-10-3. Permits for Taking Cougar.

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) To pursue cougar, a person must first obtain a valid cougar pursuit permit from a division office. A cougar pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-25(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

R657-10-4. Purchase of Permit by Mail.

(1) A person may obtain a cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to any division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, and fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-10-5. Hunting Hours.

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-10-6. Firearms and Archery Tackle.

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

R657-10-7. Traps and Trapping Devices.

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-10-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-10-9. Prohibited Methods.

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.

R657-10-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or

intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-10-11. Party Hunting.

A person may not take a cougar for another person.

R657-10-12. Use of Dogs.

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the proclamation of the Wildlife Board for taking cougar.

(2) The owner and handler of dogs used to take or pursue cougar must have a valid cougar permit or cougar pursuit permit in possession while engaged in taking or pursuing cougar.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a cougar permit.

R657-10-13. Tagging Requirements.

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-10-14. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

R657-10-15. Permanent Tag.

(1)(a) Each cougar must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-10-16. Transporting Cougar.

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

R657-10-17. Exporting Cougar from Utah.

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-10-18. Donating.

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

R657-10-19. Purchasing or Selling.

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

R657-10-20. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

R657-10-21. Livestock Depredation and Human Health and Safety.

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken with any weapon authorized for taking cougar.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

R657-10-22. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

R657-10-23. Taking Cougar.

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in proclamation of the Wildlife Board for taking cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the proclamation of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.

R657-10-24. Extended and Preseason Hunts.

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

(2) The director may authorize only those hunters who drew a limited entry permit or have purchased a harvest objective permit to hunt on that management unit and participate in a preseason or extended season hunt.

R657-10-25. Cougar Pursuit.

(1) Cougar may be pursued only by persons who have obtained a valid cougar pursuit permit. The cougar pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(3) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) A cougar pursuit permit is valid on a calendar year basis.

R657-10-26. General Application Information.

(1) A person may not apply for or obtain more than one cougar permit for the same year.

(2) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

R657-10-27. Waiting Period.

(1) Any person who obtained a limited entry permit valid for the current season may not apply for a permit for a period of three years.

(2) Any person who draws a limited entry permit for the current season may not apply for a permit for a period of three years.

(3) Waiting periods are not incurred as a result of purchasing harvest objective permits.

R657-10-28. Application Procedure.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(3)(a) Applications must be mailed by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be processed and will be returned.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-10-30.

(7) To apply for a resident permit, a person must establish residency at the time of purchase.

(8) The posting date of the drawing shall be considered the purchase date of a permit.

R657-10-29. Fees.

(1) Each application must include:

(a) the permit fee; and

(b) the nonrefundable handling fee.

(2) Permits are mailed to successful applicants.

(3)(a) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a

refund in December.

(b) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(c) The handling fees are nonrefundable.

R657-10-30. Drawing and Remaining Permits.

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of drawing results on the date published in the proclamation of the Wildlife Board for taking cougar. The drawing results will be posted on the division's Internet address.

(3) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits.

(4) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) Limited entry permits remaining after the drawing may be obtained on a first-come, first-served basis as provided in the proclamation of the Wildlife Board for taking cougar.

(6) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.

(7)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) Handling fees will not be refunded.

(8)(a) An applicant may amend their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) If the application is amended and that amendment results in an error, the division reserves the right to reject the entire application.

R657-10-31. Bonus Points.

(1) A bonus point is awarded for:

(a) a valid unsuccessful application when applying for a limited entry permit in the cougar drawing; or

(b) a valid application when applying for a bonus point in the cougar drawing.

(2) The purchase of a harvest objective permit will not affect bonus points.

(3)(a) A person may apply for one cougar bonus point each year, except a person may not apply in the drawing for both a limited entry cougar permit and a cougar bonus point in the same year.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(c) Group applications will not be accepted when applying for bonus points.

(4)(a) Each applicant receives a random drawing number for:

(i) the current valid limited entry cougar application; and

(ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(5)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(6) Bonus points are forfeited if a person obtains a limited entry cougar permit except as provided in Subsection (7).

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a Conservation Permit; or

(b) a person obtains a harvest objective cougar permit.

(8) Bonus points are not transferable.

(9) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

R657-10-32. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the proclamation of the Wildlife Board for taking cougar.

(2) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that specified management unit.

R657-10-33. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the proclamation of the Wildlife Board for taking cougar.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

R657-10-34. Harvest Objective Unit Closures.

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION or visit the division's website to verify that the cougar management unit is still open. The phone line and website will be updated each day by 8 p.m.

(2) Harvest objective units are open to hunting until:

(a) the cougar harvest objective for that unit is met; or

(b) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-10-25.

R657-10-35. Harvest Objective Unit Reporting.

(1) Any person taking a cougar with a harvest objective permit must report to the division, within 48 hours, where the cougar was taken and have a permanent tag affixed pursuant to Section R657-10-15.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required

in Subsection (1) shall be considered prima facie evidence of a knowing and flagrant violation for purposes of permit suspension.

R657-10-36. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

KEY: wildlife, cougar, game laws
October 25, 2005 23-14-18
Notice of Continuation August 21, 2006 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-24. Compensation for Mountain Lion, Bear or Eagle Damage.
R657-24-1. Purpose and Authority.

Under authority of Section 23-24-1, this rule provides the procedures, standards, requirements and limits for obtaining compensation for damages to livestock by mountain lion, black bear or an eagle.

R657-24-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-24-1(1).

(2) In addition:

(a) "Black bear" means Ursus americanus.

(b) "Fair market value" means the average commercial livestock prices from July 1 through June 30, as determined by the Utah Livestock and Auction Reporting Service.

(c) "Injury" means an act by a mountain lion or bear that results in the death of livestock within 30 days of the act or a permanent injury to livestock.

(d) "Livestock" means cattle, sheep, goats, or turkeys.

(e) "Mountain lion" means Felis concolor.

(f) "Eagle" means Haliacctus leucocephalus (bald eagle) and Aquila chrysaetos (golden eagle).

R657-24-3. Notification of Damage -- Payment of Damage Claims.

(1) When livestock are damaged by a mountain lion, bear or an eagle, the owner may receive compensation in accordance with Section 23-24-1(2).

(2)(a) Notification must be made in writing to one of the regional division offices within four working days of discovering the damage. A Proof of Loss form must then be submitted within 30 days after the original notification.

(b) Notification may be made orally to expedite field investigations, but it must be followed in writing within four working days after the damage is discovered. A Proof of Loss form must then be submitted within 30 days after the original written notification.

(3)(a) Claims for damage payments received from July 1 through June 30 are assessed and accepted or denied based on information reported on the livestock damage form.

(b) Claims accepted for damage payments are held until all damage claims for the July 1 through June 30 period have been collected.

(c) If the total amount of the damage claims exceed the appropriated funds for this purpose, damage payments will be prorated for all eligible claims.

(d) Payments for eagle damage claims shall not be made until all accepted mountain lion and bear claims for a fiscal year have first been paid.

(4) Damage payments will be paid only for confirmed losses.

(5)(a) The division or animal damage control specialists will document on approved livestock damage forms the type and magnitude of livestock losses experienced by livestock producers.

(b) Where agreement with the type or magnitude of losses is not achieved by animal damage control specialists, a division representative shall follow up with an additional field investigation to assess damage claims.

KEY: wildlife, damages, livestock
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Notice of Continuation October 7, 2005 4-23-7

R657. Natural Resources, Wildlife Resources.
R657-26. Adjudicative Proceedings for a License, Permit, or Certificate of Registration.
R657-26-1. Purpose and Authority.

Under authority of Subsection 23-19-9(15), this rule provides the procedures and standards for:

(1) the suspension of the privilege of applying for, purchasing and exercising the benefits conferred by a license or permit; and

(2) the suspension of a certificate of registration.

R657-26-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Intentionally" as defined in Section 76-2-103.

(b) "Knowingly" as defined in Section 76-2-103.

(c) "Party" means the division, Wildlife Board, or respondent.

(d) "Presiding officer" means the hearing officer appointed by the division director to conduct revocation or suspension proceedings.

(e) "Recklessly" as defined in Section 76-2-103.

(f) "Respondent" means a person against whom a suspension proceeding is initiated.

R657-26-3. Commencement of Suspension Proceedings.

(1)(a) Each adjudicative proceeding shall be commenced by the presiding officer by filing a notice of agency action.

(2) The notice of agency action shall be filed and served according to the requirements provided in Section 63-46b-3(2).

(3) All suspension proceedings conducted by the presiding officer are designated as informal adjudications. The presiding officer may convert the hearing to a formal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

R657-26-4. Procedures for Suspension Proceedings.

(1)(a) An answer or other pleading responsive to the allegations in the notice of agency action does not need to be filed by the respondent.

(b) If an answer to the notice of agency action is filed, the answer shall include:

(i) the name of the respondent;

(ii) the case number or other reference number;

(iii) the facts surrounding the allegations;

(iv) a response to the allegations that the violation was committed knowingly, intentionally or recklessly; and

(v) the date the answer was mailed.

(2) The respondent may access any relevant information contained in the division's files and all materials and information gathered in the investigation of the respondent, to the extent permitted by law.

(3) Discovery and intervention is prohibited.

R657-26-5. Hearings.

(1)(a) The presiding officer shall provide the respondent with an opportunity for a hearing.

(b) A hearing shall be held if the respondent requests a hearing within 20 days after the date the notice of agency action is issued.

(2) The respondent, or a person designated by the respondent to appear on the respondent's behalf, may testify at the hearing and present any relevant information or evidence.

(3) Hearings shall be open to the public.

(4) After reviewing all the information provided by the parties, the presiding officer shall suspend the respondent's license, permit or certificate of registration privileges in accordance with Section 23-19-9.

(5)(a) The type of license, permit or certificate of registration privilege suspension imposed shall be within the following categories:

(i) all fishing licenses and permits;

(ii) all furbearer and bobcat licenses and permits;

(iii) all big game licenses and permits;

(iv) all small game licenses and permits, and wild turkey permits;

(v) all permits to take and pursue cougar and bear;

(vi) all falconry permits and falconry certificates of registration;

(vii) certificates of registration of a type specified; or

(viii) all hunting licenses, permits and certificates of registration;

(ix) all licenses, permits and certificates of registration issued by the division.

(b) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity for which the person was participating in when the violation occurred.

(c) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity that involved the unlawful taking of terrestrial wildlife for which no season has been established.

(d) If the violation involves acts that occurred while participating in an activity regulated by Title 23, which include more than one of the types of license or permit privileges as provided in Subsection (a), the presiding officer may suspend the license, permit or certificate of registration privileges for all categories that apply.

(e) The presiding officer may impose a suspension of all privileges to hunt protected wildlife or all privileges to take protected wildlife if the violations are found by the hearing officer to be conspicuously bad or offensive, and may include, but are not restricted to, the violations described in Subsection (e)(i) through Subsection (e)(viii).

(i) Any violation which could result in suspension that involves taking, in a single criminal episode, four times the legal bag limit of any protected fish species.

(ii) Any violation which could result in suspension that involves taking, in a single criminal episode, three times the legal bag limit of any small game species or waterfowl.

(iii) Any violation which could result in suspension that involves a once-in-a-lifetime species.

(iv) Any violation which could result in suspension that occurs out of season or in a closed area for the species illegally taken and involves a trophy animal.

(v) Three or more felony or class A misdemeanor violations under Section 23-20-4 in a seven-year period, regardless of suspension periods previously imposed.

(vi) Any violation which could result in suspension that involves the illegal taking, in a single criminal episode, of two or more big game animals not classified as once-in-a-lifetime.

(vii) Any violation which could result in suspension that involves the illegal taking, in a single criminal episode, of two or more cougar or bear.

(viii) Any violation subject to Section 23-19-9 that further violates an existing order of revocation or suspension recognized by the Utah Division of Wildlife Resources.

(6) The director shall appoint a qualified person as a hearing officer in accordance with Section 23-19-9(9).

(7)(a) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration in accordance with Section 23-19-9(10).

(8) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title

23, Chapter 25, Wildlife Violator Compact.

R657-26-6. Issuance of Decision and Order.

(1) Within a reasonable time after the close of the adjudicative proceeding, the presiding officer shall issue a signed, written order that states:

(a) the decision;

(b) the reasons for the decision;

(c) a notice of any right of administrative or judicial review available to the parties; and

(d) the time limits for filing an appeal or requesting a review.

(2) The decision and order shall be based on facts appearing in division files and on the testimony and facts presented in evidence at the hearing.

(3)(a) A copy of the decision and order shall be promptly mailed to all parties.

(b) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

R657-26-7. Default.

(1) The presiding officer may enter an order of default against the respondent if the respondent fails to participate, either in writing or in person, in the adjudicative proceeding.

(2) Upon issuing the order of default, the presiding officer shall complete the adjudicative proceeding without participation of the party in default and shall:

(a) include a statement of the grounds for default;

(b) make a finding of all relevant issues required in Sections R657-26-5(4) and (5); and

(c) mail a copy of the order to all parties.

(i) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

(3)(a) A defaulted party may seek to have the presiding officer set aside the default order, and any order in the adjudicative proceeding issued subsequent to such default, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default order and any subsequent order shall be made to the presiding officer.

(c) A defaulted party may seek Wildlife Board Review under Section R657-26-8 only on the decision of the presiding officer on the motion to set aside the default.

R657-26-8. Wildlife Board Review - Procedure.

(1)(a) A person may file an appeal of a presiding officer's decision with the Wildlife Board.

(b) The appeal must be in writing and the respondent shall send a copy of the appeal by mail to the chair of the Wildlife Board and each of the parties.

(2) The appeal must be filed within 30 days after the issuance of the presiding officer's decision and order.

(3) The appeal shall:

(a) be signed by the respondent or the respondent's legal counsel;

(b) state the grounds for appeal and the relief requested; and

(c) state the date upon which it was mailed.

(4)(a) Within 15 days after the mailing date of the appeal, any party may file a written response with the Wildlife Board.

(b) A copy of the response shall be sent by mail to the chair of the Wildlife Board and each of the parties.

(5) The Wildlife Board may hold a de novo formal hearing in accordance with the provisions of Section 63-46b-6 through Section 63-46b-10. The Wildlife Board may convert the hearing to an informal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(6) At the conclusion of the hearing, the Wildlife Board may:

(a) affirm the decision;

(b) vacate or remand the decision;

(c) amend the type of suspension ordered by the presiding officer; or

(d) amend the suspension period.

(7) The Wildlife Board chair may vote in an adjudicative proceedings decision, and any Wildlife Board decision shall be supported by a majority of the voting members present.

(8)(a) If the Wildlife Board takes any action to vacate or remand the decision or amend the type of suspension, the chair of the Wildlife Board shall, within a reasonable time, issue a written order on review.

(b) The order on review shall be signed by the chair of the Wildlife Board and mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute permitting review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) whether the decision of the presiding officer is to be affirmed, reversed, modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vi) a notice of any right of further administrative reconsideration or judicial review; and

(vii) the time limits applicable to any appeal or review.

R657-26-9. Reinstatement of a License, Permit, or Certificate of Registration.

(1) A presiding officer may reinstate a person's license, permit, or certificate of registration suspended under Section 23-19-9.5 upon receiving a written request for reinstatement.

(2) The person making the request shall include:

(a) the person's name, phone number, and mailing address;

(b) the number of the license, permit, or certificate of registration that was suspended or revoked;

(c) the date the violation occurred;

(d) the date the request was mailed;

(e) the state in which the violation occurred;

(f) a copy of a receipt from the court where the violation was processed stating the violation is no longer outstanding; and

(g) the person's signature.

(3) Within a reasonable time of receiving the request, the presiding officer shall issue a written order stating whether the request is granted or denied and the reasons for the decision.

(4) If a presiding officer denies a person's request for reinstatement, the person may submit a request for reconsideration by following the procedures provided in Section 63-46b-13.

KEY: wildlife, suspensions, violations

December 2, 2004	**23-13-2**
Notice of Continuation August 21, 2006	**23-14-1**
	23-14-19
	23-19-9
	23-20-14
	63-46b-13
	63-46b-5

R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season except turkey permits are valid during any season option.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, Rocky Mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organizations from the sale of conservation permits that the organization retains for eligible projects, excluding interest earned thereon.

(g) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection (g), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(h) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(i) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game proclamation for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer and elk from September 1 through January 15;

(ii) one Merriam and one Rio Grand turkey on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective; and

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit.

R657-41-3. Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each conservation permit species.

(3) A limited number of area conservation permits may be authorized as follows:

(a) a maximum of 10% of the total permits, assigned to a hunt area or combination of hunt areas, for Rocky Mountain bighorn sheep and desert bighorn sheep;

(b) a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area for the remaining conservation permit species.

(4) The number of conservation and sportsman permits available for use will be determined by the Wildlife Board.

(5) Area conservation permits shall be deducted from the number of public drawing permits.

(6) One sportsman permit shall be authorized for each statewide conservation permit authorized.

(7) All area conservation permits are eligible as multi-year permits except that the division may designate some area conservation permits as single year permits based on the applications received for single year permits.

(8) All statewide permits will be multi-year permits except for a second statewide permit issued for a special event.

R657-41-4. Eligibility for Conservation Permits.

(1) Statewide and area conservation permits may be awarded to eligible conservation organizations to market and sell, or to use as an aid in wildlife related fund raising activities.

(2) To be eligible for multi-year conservation permits, a conservation organization must have generated in conservation permit sales during the previous three year period at least one percent of the total revenue generated by all conservation organizations in conservation permit sales during the same period. Conservation organizations eligible for multi-year permits may not apply for single year permits, and conservation organizations ineligible for multi-year permits may only apply for single year permits.

(3) Conservation organizations applying for single year permits may not:

(a) bid for or obtain conservation permits if any employee, officer, or board of director member of the conservation organization is an employee, officer, or board of director member of any other conservation organization that is submitting a bid for single year conservation permits; or

(b) enter into any pre-bidding discussions, understandings or agreements with any other conservation organization submitting a bid for conservation permits regarding:

(i) which permits will be sought by a bidder;

(ii) what amounts will be bid for any permits; or

(iii) trading, exchanging, or transferring any permits after permits are awarded.

R657-41-5. Applying for Conservation Permits.

(1)(a) Conservation organizations may apply for conservation permits by sending an application to the division.

(b) Only one application per conservation organization may be submitted. Multiple chapters of the same conservation organization may not apply individually.

(c) Conservation organizations may apply for single year conservation permits or multi-year conservation permits. They may not apply for both types of conservation permits.

(2) The application must be submitted to the division by September 1 to be considered for the following year's conservation permits. Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax exempt status under Internal Revenue Code, Section 501C-3 as amended; and

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(3) If applying for single year conservation permits, a conservation organization must also include in its application:

(a) the proposed bid amount for each permit requested. The proposed bid amount is the revenue the organization anticipates to be raised from a permit through auction or other lawful fund raising activity.

(b) certification that there are no conflicts of interest or collusion in submitting bids as prohibited in R657-41-4(3);

(c) acknowledgement that the conservation organization recognizes that falsely certifying the absence of collusion may result in cancellation of permits, disqualification from bidding for five years or more, and the filing of criminal charges;

(d) evidence that the application and bid has been reviewed and approved by the board of directors of the bidding conservation.

(e) the type of permit, and the species for which the permit is requested; and

(f) any requested variances for an extended season or legal weapon choice for area conservation permits.

(4) An application that is incomplete or completed incorrectly may be rejected.

(5) The application of a conservation organization for conservation permits may be denied for:

(a) failing to fully report on the preceding year's conservation permits;

(b) violating any provision of this rule, Title 23 of the Utah Code, Title R657 of the Utah Administrative Code, a division proclamation, or an order of the Wildlife Board; or

(c) violating any other law that bears a reasonable relationship to the applicant's ability to responsibly and lawfully handle conservation permits pursuant to this rule.

R657-41-6. Awarding Single Year Conservation Permits.

(1) The division shall recommend the conservation organization to receive each single year conservation permit based on:

(a) the bid amount pledged to the species, adjusted by:

(i) the performance of the organization over the previous two years in meeting proposed bids;

(ii) 90% of the bid amount;

(iii) the organizations maintaining a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the total revenue generated from permit sales, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) if two or more conservation organizations are tied using the criteria in Subsection (a), the closeness of the organization's purpose to the species of the permit; and

(c) if two or more conservation organizations are tied using the criteria in Subsection (a) and (b), the geographic closeness of the organization to the location of the permit.

(2)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw its application for any given permit or exchange its application with another conservation organization without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws it's bid and the bid is awarded to another organization at a lower amount, then the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(3) The Wildlife Board shall make the final assignment of conservation permits at a meeting prior to December 1 annually.

(4) The Wildlife Board may authorize a conservation permit to a conservation organization, other than the conservation organization recommended by the division, after considering the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife in Utah;

(d) previous performance of the conservation organization; and

(e) overall viability and integrity of the conservation permit program.

(5) The total of all bids for permits awarded to any one organization shall not exceed $20,000 the first year an organization receives permits.

(6) The number of permits awarded to any one organization shall not increase by more than 100% from the previous year.

(7) If the Wildlife Board authorizes a second statewide conservation permit for a species, the conservation organization receiving the permit must meet the division designated bid for that permit.

R657-41-7. Awarding Multi-Year Conservation Permits.

(1) Distribution of multi-year conservation permits will be based on a sequential selection process where each eligible conservation organization is assigned a position or positions in the selection order among the other participating organizations and awarded credits with which to purchase multi-year permits at an assigned value. The selection process and other associated details are as follows.

(2) Multi-year permits will be awarded to eligible conservation organizations for no more than three years.

(3) The division will determine the number of permits available as multi-year permits after subtracting the proposed number of single year permits.

(a) Season types for multi-year area conservation permits for elk on any given hunt unit will be designated and assigned in the following order:

(i) first permit -- premium;

(ii) second permit -- any-weapon;

(iii) third permit -- any-weapon;

(iv) fourth permit -- archery;

(v) fifth permit -- muzzleloader;

(vi) sixth permit -- premium;

(vii) seventh permit -- any-weapon; and
(viii) eighth permit -- any-weapon.
(b) Season types for multi-year area conservation permits for deer on any given hunt unit will be designated and assigned in the following order:
(i) first permit -- hunter choice of season;
(ii) second permit -- hunter choice of season;
(iii) third permit -- muzzleloader;
(iv) fourth permit -- archery;
(v) fifth permit -- any-weapon;
(vi) sixth permit -- any-weapon;
(vii) seventh permit -- muzzleloader; and
(viii) eighth permit -- archery.
(4) The division will assign a monetary value to each multi-year permit based on the average return for the permit during the previous three year period. If a history is not available, the value will be estimated.
(5) The division will determine the total annual value of all multi-year permits.
(6)(a) The division will calculate a market share for each eligible conservation organization applying for multi-year permits.
(b) Market share will be calculated and determined based on:
(i) the conservation organization's previous three years performance;
(ii) all conservation permits (single and multi-year) issued to a conservation organization except for special permits allocated by the Wildlife Board outside the normal allocation process.
(iii) the percent of conservation permit revenue raised by a conservation organization during the three year period relative to all conservation permit revenue raised during the same period by all conservation organizations applying for multi-year permits.
(7) The division will determine the credits available to spend by each group in the selection process based on their market share multiplied by the total annual value of all multi-year permits.
(8) The division will establish a selection order for the participating conservation organizations based on the relative value of each groups market share as follows:
(a) groups will be ordered based on their percent of market share;
(b) each selection position will cost a group 10% of the total market share except the last selection by a group will cost whatever percent a group has remaining;
(c) no group can have more than three positions in the selection order; and
(d) the selection order will be established as follows:
(i) the group with the highest market share will be assigned the first position and ten percent will be subtracted from their total market share;
(ii) the group with the highest remaining market share will be assigned the second position and ten percent will be subtracted from their market share; and
(iii) this procedure will continue until all groups have three positions or their market share is exhausted.
(9) At least two weeks prior to the multi-year permit selection meeting, the division will provide each conservation organization applying for multi-year permits the following items:
(a) a list of multi-year permits available with assigned value;
(b) documentation of the calculation of market share;
(c) credits available to each conservation group to use in the selection process;
(d) the selection order; and
(e) date, time and location of the selection meeting.
(10) Between the establishing of the selection order and the selection meeting, groups may trade or assign draw positions, but once the selection meeting begins draw order cannot be changed.
(11) At the selection meeting, conservation organizations will select permits from the available pool according to their respective positions in the selection order. For each permit selected, the value of that permit will be deducted from the conservation organization's available credits. The selection order will repeat itself until all available credits are used or all available permits are selected.
(12) Conservation organizations may continue to select a single permit each time their turn comes up in the selection order until all available credits are used or all available permits are selected.
(13) A conservation organization may not exceed its available credits except a group may select their last permit for up to 10% of the permit value above their remaining credits.
(14) Upon completion of the selection process, but prior to the Wildlife Board meeting where final assignment of permits are made, conservation organizations may trade or assign permits to other conservation organizations eligible to receive multi-year permits. The group receiving a permit retains the permit for the purposes of marketing and determination of market share for the entire multi-year period.
(15) Variances for an extended season or legal weapon choice may be obtained only on area conservation permits and must be presented to the Wildlife Board prior to the final assignment of the permit to the conservation organization.
(16) Conservation organizations may not trade or transfer multi-year permits to other organizations once assigned by the Wildlife Board.
(17) Conservation organizations failing to comply with the reporting requirements in any given year during the multi-year period shall lose the multi-year conservation permits for the balance of the multi-year award period.
(18) If a conservation organization is unable to complete the terms of marketing the assigned permits, the permits will be returned to the regular public drawing process for the duration of the multi-year allocation period.

R657-41-8. Distributing Conservation Permits.
(1) The division and conservation organization receiving permits shall enter into a contract.
(2)(a) The conservation organization receiving permits must insure that the permits are marketed and distributed by lawful means. Conservation permits may not be distributed in a raffle except where the following conditions are met:
(i) the conservation organization obtains and provides the division with a written opinion from a licensed attorney or a written confirmation by the local district or county attorney that the raffle scheme is in compliance with state and local gambling laws;
(ii) except as otherwise provided in R657-41-8(5), the conservation organization does not repurchase, directly or indirectly, the right to any permit it distributes through the raffle;
(iii) the conservation organization prominently discloses in any advertisement for the raffle and at the location of the raffle that no purchase is necessary to participate; and
(iv) the conservation organization provides the division with a full accounting of any funds raised in the conservation permit raffle, and otherwise accounts for and handles the funds consistent with the requirement in Utah Admin. Code R657-41-9.
(3) The conservation organization must:
(i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and
(ii) notify the division of the proposed permit recipient

within 10 days of the recipient selection or the permit may be forfeited.

(4) If a person is selected by a qualified organization to receive a conservation permit and is also successful in obtaining a permit for the same species in the same year through the a division drawing, that person may designate another person to receive the conservation permit, provided the conservation permit has not been issued by the division to the first selected person.

(5) If a person is selected by a qualified organization to receive a conservation permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

(a) the conservation organization selects the new recipient of the permit;

(b) the amount of money received by the division for the permit is not decreased;

(c) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided in Section R657-41-9;

(d) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

(e) the permit has not been issued by the division to the first designated person.

(6) Except as otherwise provided under Subsections (4) and (5), a person designated by a conservation organization as a recipient of a conservation permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except for:

(a) elk, provided no more than two permits are obtained where one or both are antlerless permits; and

(b) turkey.

R657-41-9. Conservation Permit Funds and Reporting.

(1) All permits must be marketed by September 1, annually.

(2) Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the total funds raised on each permit;

(c) the funds due to the division; and

(d) a report on the status of each project funded in whole or in part with retained conservation permit revenue.

(3)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in Subsection (5)(a).

(4)(a) Conservation organizations shall remit to the division by September 1 of each year 30% of the total revenue generated by conservation permit sales in that year.

(b) The permit revenue payable to the division under Subsection (4)(a), excluding accrued interest, is the property of the division and may not be used by conservation organizations for projects or any other purpose.

(c) The permit revenue must be placed in a federally insured account promptly upon receipt and remain in the account until remitted to the division on or before September 1 of each year.

(d) The permit revenue payable to the division under this subsection shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the permit revenue is not lost.

(e) Failure to remit 30% of the total permit revenue to the Division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code, and may further disqualify the conservation organization from obtaining any future conservation permits.

(5) A conservation organization may retain 70% of the revenue generated from the sale of conservation permits as follows:

(a) 10% of the revenue may be withheld and used by the conservation organization for administrative expenses.

(b) 60% of the revenue may be retained and used by the conservation organization only for eligible projects as provided in subsections (i) through (ix).

(i) eligible projects include habitat improvement, habitat acquisition, transplants, targeted education efforts and other projects providing a substantial benefit to species of wildlife for which conservation permits are issued.

(ii) retained revenue shall not be committed to or expended on any eligible project without first obtaining the division director's written concurrence.

(iii) retained revenue shall not be used on any project that does not provide a substantial and direct benefit to conservation permit species located in Utah.

(iv) cash donations to the Wildlife Habitat Account created under Section 23-19-43, Division Species Enhancement Funds, or the Conservation Permit Fund shall be considered an eligible project and do not require the division director's approval, provided the donation is made with instructions that it be used for species of wildlife for which conservation permits are issued.

(v) retained revenue shall not be used on any project that is inconsistent with division policy, including feeding programs, depredation management, or predator control.

(vi) retained revenue under this subsection must be placed in a federally insured account. All interest revenue earned thereon may be retained and used by the conservation organization for administrative expenses.

(vii) retained revenue shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the retained revenue is not lost.

(viii) retained revenue must be completely expended on or committed to approved eligible projects by September 1, two years following the year in which the relevant conservation permits are awarded to the conservation organization by the Wildlife Board. Failure to commit or expend the retained revenue by the September 1 deadline will disqualify the conservation organization from obtaining any future conservation permits until the unspent retained revenue is committed to an approved eligible project.

(ix) all records and receipts for projects under this subsection must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(6)(a) Conservation organizations accepting permits shall be subject to annual audits on project expenditures and conservation permit accounts.

(b) The division shall perform annual audits on project expenditures and conservation permit accounts.

R657-41-10. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through

a drawing for each of the following species:
(a) desert bighorn (ram);
(b) bison (hunter's choice);
(c) buck deer;
(d) bull elk;
(e) Rocky Mountain bighorn (ram)
(f) Rocky Mountain goat (hunter's choice)
(g) bull moose;
(h) buck pronghorn;
(i) black bear;
(j) cougar; and
(k) wild turkey.
(2) The following information on sportsman permits is provided in the proclamations of the Wildlife Board for taking protected wildlife:
(a) hunt dates;
(b) open units or hunt areas;
(c) application procedures;
(d) fees; and
(e) deadlines.

R657-41-11. Using a Conservation or Sportsman Permit.
(1)(a) A conservation or sportsman permit allows the recipient to take only one individual of the species for which the permit is issued, except a statewide turkey conservation or sportsman permit allows the holder to take one Merriam's and one Rio Grand turkey.
(b) The species that may be taken shall be printed on the permit.
(c) The species may be taken in the area and during the season specified on the permit.
(d) The species may be taken only with the weapon specified on the permit.
(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.
(3) Bonus points shall not be awarded or utilized:
(a) when applying for conservation or sportsman permits; or
(b) in obtaining conservation or sportsman permits.
(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-5, R657-6, R657-10 and R657-33.

R657-41-12. Failure to Comply.
Any conservation organization administratively or criminally found in violation of this rule or the Wildlife Resources Code may be suspended from participation in the conservation permit program and required to surrender all conservation permit vouchers.

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August 8, 2006 23-14-18
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R657. Natural Resources, Wildlife Resources.
R657-48. Wildlife Species of Concern and Habitat Designation Advisory Committee.
R657-48-1. Authority and Purpose.

(1) Pursuant to Sections 23-14-19 and 63-34-5(2)(a) of the Utah Code, this rule:

(a) establishes the Wildlife Species of Concern and Habitat Designation Advisory Committee;

(b) defines its purpose and relationship to local, state and federal governments, the public, business, and industry functions of the state;

(c) defines the Utah Sensitive Species List; and

(d) defines the procedure for:

(i) the designation of wildlife species of concern as part of a process to preclude listing under the ESA; and

(ii) review, identification and analysis of wildlife habitat designation and management recommendations relating to significant land use development projects.

R657-48-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Committee" means the Wildlife Species of Concern and Habitat Designation Advisory Committee.

(b) "Conservation species" means wildlife species or subspecies that are currently receiving special management under a conservation agreement developed or implemented by the state to preclude the need for listing under the ESA.

(c) "Department" means the Department of Natural Resources.

(d) "Division" means the Division of Wildlife Resources within the Department.

(e) "ESA" means the federal Endangered Species Act.

(f) "Executive Director" means Executive Director of the Department.

(g) "Habitat identification material" means maps, data, or documents prepared by the Division in the process of specifying wildlife habitat.

(h) "Management recommendations" means determinations of, amount of, level of intensity, timing of, any restrictions, conditions, mitigation, or allowances for activities proposed for a project area pursuant to this rule.

(i) "NEPA" means the National Environmental Policy Act as defined in 42 U.S.C. Section 4321-4347.

(j) "Interested Person" means an individual, firm, association, corporation, limited liability company, partnership, commercial or trade entity, any agency of the United States Government, the State of Utah, its departments, agencies and political subdivisions.

(k) "Project area" means the geographical area covered by a significant land use development.

(l) "Proposed wildlife habitat designation" means identified habitat in a project area undergoing review pursuant to this rule.

(m) "Significant land use development" means any project or development identified as such by the Executive Director, or as approved through petition as described in Section R657-48-5.

(n) "Wildlife habitat designation document" means the written decision of the Executive Director after following the provisions of this rule for wildlife habitat designation and management recommendations for a project area.

(o) "State sensitive species" means:

(i) wildlife species or subspecies listed under the ESA, and now or previously present in Utah;

(ii) wildlife species or subspecies de-listed under the ESA during the past six months that are now or were previously present in Utah;

(iii) wildlife species or subspecies now or previously present in Utah that are currently proposed by the U.S. Fish and Wildlife Service for listing under ESA;

(iv) candidate wildlife species or subspecies under the ESA now or previously present in Utah;

(v) wildlife species or subspecies removed from the ESA candidate list during the past six months that are now or were previously present in Utah;

(vi) conservation species; or

(vii) wildlife species of concern.

(p) "Wildlife habitat designation" means the wildlife habitat identification within a project area issued pursuant to this rule.

(q) "Wildlife habitat identification" means the description, classification and assignment by the Division of any area of land or bodies of water as the habitat, range or area of use, seasonally, historically, currently, or prospectively of or by any species of game or non-game wildlife in the State of Utah.

(r) "Wildlife species of concern" means a wildlife species or subspecies within the state of Utah for which there is credible scientific evidence to substantiate a threat to continued population viability.

(s) "Wildlife species of concern designation" means the decision to bestow wildlife species of concern status on a wildlife species or subspecies, or remove wildlife species of concern status from a wildlife species or subspecies, pursuant to this rule.

(t) "Utah Sensitive Species List" means the list of all current state sensitive species.

R657-48-3. Department Responsibilities.

(1) There is established a Wildlife Species of Concern and Habitat Designation Advisory Committee within the Department of Natural Resources.

(2) The Department shall provide staff support, arrange meetings, keep minutes, and prepare and distribute final recommendations.

R657-48-4. Committee Membership and Procedure.

(1) Committee membership shall consist of:

(a) the Executive Director of the Department;

(b) the Director of the Utah Public Lands Policy Coordinating Office or a designee;

(c) the Director of the Division or a designee;

(d) the Director of the Division of Oil, Gas and Mining or a designee;

(e) the Director of the Division of Water Resources or a designee; and

(f) any other Department Division heads or designees as determined by the Executive Director of the Department.

(2) The Executive Director shall serve as chair.

(3) Three members, consisting of the Executive Director, the Division Director and the Director of the Division of Oil, Gas and Mining, shall constitute a quorum for meetings of the Committee.

(4) The Committee shall meet as specified by the Executive Director.

(5) The following procedure shall be used for submitting review items to the Executive Director for inclusion on the Committee agenda:

(a) the Division Director shall submit for committee review all proposed wildlife species of concern designations; and

(b) the Division Director shall submit for committee review any proposed or existing wildlife habitat designations and corresponding management recommendations within a project area.

(i) The Division shall support its proposals for wildlife species of concern designations, wildlife habitat designations and management recommendations with:

(A) studies, investigations and research supporting the need for the designations and the potential impacts of each proposal;

(B) field survey and observation data; and

(C) federal, state, local and academic information on habitat, historical distribution, and other data or information collected in accordance with generally accepted scientific techniques and practices.

(6) The Department will provide an analysis of potential impacts of the proposed designations and the existing social and economic needs of the affected communities and interests.

R657-48-5. Public Participation and Setting of Meeting Agenda.

(1) An interested person may petition the Executive Director for a hearing before the Committee to designate a project as a significant land use development for purposes of this rule.

(2) The Executive Director shall act to approve or disapprove a petition or extension request within 14 calendar days.

(3)(a) The agenda shall consist of items determined by the Executive Director, and copies shall be sent to Committee members and other interested persons as requested.

(b) The agenda shall be distributed at least 28 calendar days prior to the meeting.

(c) Requests to receive notices and agendas must be submitted in writing to the Executive Director's Office as provided in Subsection R657-48-9(1).

(4) Any interested person may:

(a) submit comments on proposed wildlife species of concern and wildlife habitat designations;

(i) comments must be submitted in writing to the Executive Director for review and must be submitted at least seven calendar days prior to the meeting;

(b) request an extension of up to 30 calendar days to review a proposed Committee action; or

(c) request to make an oral presentation before the Committee.

(i) An interested person seeking to make a presentation before the Committee concerning any matter under review, must submit a written request and supporting documentation to the Executive Director at least 14 calendar days prior to the meeting.

R657-48-6. Committee Review Actions.

(1) In conducting a review of issues, the Committee may:

(a) require additional information from the Division, the Department or interested persons;

(b) require the Division or interested persons to make presentations before the Committee or provide additional documentation in support or opposition of the recommendation;

(c) schedule additional meetings where public interest or agency concern merits additional discussion;

(d) undertake additional review functions as needed; or

(e) consider the need for involvement of other persons or agencies, or whether other action may be needed.

(2) Following the Committee's review and recommendation, the Executive Director shall:

(a) make a final determination and, if warranted, recommend the approval of any or all proposed wildlife species of concern designations to the Wildlife Board; or

(b) in the case of proposed wildlife habitat designations, make a final determination.

(3) The Executive Director's decision will be announced at that meeting, or the next formal meeting, on the proposed wildlife species of concern designations or habitat designations, unless an alternative time is required by federal or state law, or rule.

R657-48-7. Wildlife Species of Concern Designation Process.

(1) A wildlife species of concern designation shall be made only after the Executive Director, following consideration of the Committee's recommendations, has made a formal written recommendation to the Wildlife Board, and after that Board has considered:

(a) the Executive Director's recommendation, and all comments on such recommendation; and

(b) all data, testimony and other documentation presented to the Committee and the Wildlife Board pertaining to such proposed designation.

(2) All wildlife species of concern designations shall be made:

(a) pursuant to the procedures specified in this rule; and

(b) as an independent public rulemaking pursuant to the Administrative Rulemaking Act, Title 63, Chapter 46(a) of the Utah Code.

(3) With each proposed wildlife species of concern designation, the accompanying analysis shall include either a species status or habitat assessment statement, a statement of the habitat needs and threats for the species, the anticipated costs and savings to land owners, businesses, and affected counties, and the inclusion of the rationale for the proposed designation.

(4) The Wildlife Board may approve, deny or remand the proposed wildlife species of concern designation to the Executive Director.

(5) Until a proposed wildlife species of concern designation is finalized, the proposed designation may not be used or relied upon by any governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife species of concern designations as part of the administrative record and make such information available, subject to the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

(7) The Division shall maintain the Utah Sensitive Species List and update the list as necessary to maintain consistency with Subsection R657-48-2(2)(o) as the statuses of sensitive species change due to one or more of the following:

(a) wildlife species of concern or other wildlife species are listed under ESA;

(b) wildlife species are de-listed under ESA;

(c) wildlife species' names change due to taxonomic revisions;

(d) new wildlife species of concern are designated pursuant to this rule;

(e) wildlife species of concern status is removed from species pursuant to this rule;

(f) conservation agreements are developed and implemented for species;

(g) conservation agreements become invalid;

(h) species become candidates for listing under ESA;

(i) species lose candidate status under ESA;

(j) species are formally proposed for listing under ESA by the U.S. Fish and Wildlife Service; or

(k) species lose proposed status under ESA.

(8) If a species designated as a wildlife species of concern is listed under ESA, is proposed for listing under ESA, becomes a candidate for listing under ESA, or becomes a conservation species, the changed species status will be reflected in the Utah Sensitive Species List. If the species subsequently loses its ESA status or the conservation agreement becomes invalid, the species will revert to wildlife species of concern status.

R657-48-8. Wildlife Habitat Designations and Management Recommendations.

(1) Wildlife habitat designations and management recommendations for project areas will be made pursuant to the procedures specified by this rule.

(2) Any Department or Division map, identification of habitat, document or other material that is provided or released to, or used by any persons, including federal agencies, which includes wildlife habitat designations that have been adopted under this rule will so indicate.

(3) A proposed wildlife habitat designation and management recommendation shall be adopted by the Executive Director only after the Executive Director, following consideration of the Committee's recommendations, has considered all data, testimony and other documentation presented to the Committee pertaining to such proposed designation.

(4) Until a final determination on a proposed wildlife habitat and management recommendation has been made by the Executive Director, the proposed wildlife habitat or management recommendations may not be used or relied upon by any other governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(5) A Wildlife Habitat Designation document developed for the purpose of this rule, having been completed by the Executive Director, shall be attached to the wildlife habitat identification materials and made available for public review or copying upon request.

(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife habitat designations and management recommendations as part of the administrative record, and make this information available in accordance with the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

R657-48-9. Distribution.

(1) The Division shall send by mail or electronic means a copy of a proposed wildlife species of concern designation or wildlife habitat and management determination established under this rule to the following:

(a) any person who has requested in writing that the Division provide notice of any proposed wildlife species of concern designations or proposed wildlife habitat and management recommendations under this rule; and

(b) county commissions and tribal governments, which have jurisdiction over lands that are covered by a proposed wildlife habitat designation and management recommendation and of lands inhabited by a species proposed to be designated as a wildlife species of concern under this rule.

(2) Wildlife species of concern designations, wildlife habitat designations or management recommendations may not be used by governmental entities as a basis to involuntarily restrict the private property rights of landowners and their lessees or permittees.

KEY: species of concern*, habitat designation
August 8, 2006 23-14-19
Notice of Continuation May 24, 2006 63-34-5(2)(a)

R708. Public Safety, Driver License.
R708-26. Learner Permit Rule.
R708-26-1. Purpose.

The purpose of the rule is to set forth the restrictions to be imposed on a person driving a motor vehicle with a learner's permit.

R708-26-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(b).

R708-26-3. Definitions.

"Learner permit" means a temporary restricted driving permit issued by the Driver License Division to a qualified person who has not completed all the requirements to obtain a full driving privilege.

R708-26-4. Restrictions.

The restrictions set forth in Section 53-3-210.5 for a driver holding a learner permit shall be printed on the permit along with any other restrictions deemed necessary by the Driver license Division.

R708-26-5. Motorcycle Learner Permit.

A person who has been issued a motorcycle learner permit may drive a motorcycle only during daylight hours and only without passengers.

KEY: learner permit
August 8, 2006 53-3-210
Notice of Continuation August 25, 2004

R708. Public Safety, Driver License.
R708-27. Certification of Driver Education Teachers in the Public Schools to Administer Knowledge and Driving Skills Tests.
R708-27-1. Authority and Purpose.

This rule establishes standards and procedures to certify teachers of driver education classes in the public schools to administer knowledge and driving skills tests as required by Section 53A-13-208.

R708-27-2. Definitions.

"Cancellation" means the certification is void.

"Certification" means the process by which public education teachers of driver education are certified by the Driver License Division to administer knowledge and driving skills tests.

"Division" means the Driver License Division of the Utah Department of Public Safety.

"Suspension" means that a teacher's certification is currently void but may be reinstated whenever the teacher follows a division-approved plan and complies with reinstatement procedures.

"Teacher" means a teacher of driver education classes in the public schools of the State of Utah.

"Test" means a division approved knowledge test or driving skills test as approved by the division.

"USOE" means the Utah State Office of Education.

R708-27-3. Standards and Procedures.

(1) A teacher shall become certified by making application and by meeting the requirements of this rule. Application shall be made on a form furnished by the division and shall include the following information:

(a) The name of the teacher who is applying for certification;

(b) The addresses of locations where the teacher will be conducting driver education tests; and

(c) A verification that the teacher has completed division approved training for knowledge and driving skills testing.

(2) The division will offer training to teachers concerning minimum standards which must be met in the administration and scoring of tests.

(3) The division may authorize and train personnel within the public schools to provide the above training to teachers desiring to be certified to administer driver license knowledge and driving skills tests.

(4) When testing students for driver licenses, certified teachers shall use only such driver training tests which are developed and used as a standard by the division for first time driver license applicants.

(5) Knowledge test questions shall be kept in a secure place and shall be accessible only to school officials and to the division. Copies of the tests shall not be retained by students.

(6) The driving skills test shall be conducted on streets, highways and off-road courses only. No simulator testing shall be substituted as part of the final test.

(7) The test results will be valid for driver licensing purposes only if administered in conjunction with approved public driver education courses and by teachers meeting the requirements of these rules.

(8) Records of all student test results shall be retained by the school for a four year period. The records shall be accessible to the division upon request during normal school hours.

(9) Investigations and resolution of complaints relating to testing under this program shall be the responsibility of the USOE.

(10) The USOE shall provide annually, on or before September 30, to the division, a list of all active certified driver education teachers.

R708-27-4. Submittal of Evidence of Student Test Completion.

(1) The following procedures shall be followed by the teacher and the student in submitting evidence of satisfactory completion of knowledge and driving skills testing.

(2) As evidence of satisfactory completion of knowledge testing, the school shall furnish a certificate of knowledge test completion to the student. The certificate shall be a form approved by the division and shall contain:

(a) the student's full legal name;

(b) the student's date of birth;

(c) the name of the school district;

(d) the name of the school;

(e) the school ID number;

(f) results of the knowledge test;

(g) the date the test was passed; and

(h) the signature of the certified teacher who administered the test.

(3) To apply for a Class D learner permit, a student must successfully pass the written knowledge test given by the division, or submit the certificate of knowledge test completion given him by the school.

(4) As evidence of satisfactory completion of driving skills testing and course completion, the school shall furnish a certificate to the student. The certificate shall be a form approved by the division and shall contain the following:

(a) the student's name as it appears on the Utah Lerner permit;

(b) the student date of birth;

(c) the student's date of birth,

(d) original issue date of completion certificate;

(e) results of the driving skills test;

(f) the signature of the certified teacher who administered the test;

(g) the date the test was completed;

(h) the date the driver education course was completed;

(i) the school ID number;

(j) the name of the school district; and

(k) the name of the school.

(5) To apply for a Class D driver license, a student may submit the completed certificate of testing and the certificate of completion of driver training course, as issued to him/her by the school, to a division testing station.

(6) When a student applies for a Class D driver license, the Division may waive it's normally administered knowledge and driving skills tests for students presenting valid certificates of testing.

R708-27-5. Refusal to Certify, Grounds for Cancellation and Suspension of Certification.

(1) The division may refuse to certify teacher applicants who do not meet the standards for training or who submit an application that contains false or incomplete information.

(2) The certification of a teacher shall be effective until cancelled or suspended by the division. The USOE may initiate suspension or cancellation of a certification by providing the division with a written request.

(3) Certification once granted may be cancelled or suspended for non-compliance with these rules.

(4) When the division determines that a need exists to cancel or suspend a teacher's certification, it shall determine an appropriate course of action from the following options:

(a) suspension, pending a plan for remediation leading to reinstatement, or

(b) cancellation of certification.

(5) Reinstatement following cancellation of certification shall consist of completing an approved training plan following

cancellation of certification and making application for a new certification.

(6) Certification shall be cancelled when teachers no longer are employed as licensed public school teachers. Teachers who discontinue employment with the USOE and then return to teach driver education must make a new application with the division for a new certification and complete approved training following cancellation of certification.

KEY: driver education, teacher certification
August 8, 2006 53A-13-208
Notice of Continuation November 25, 2002

R708. Public Safety, Driver License.
R708-32. Uninsured Motorist Database.
R708-32-1. Purpose.

The purpose of this rule is to define the procedures which will be used to administer the provisions of the "database" and the information and format in which it will be available.

R708-32-2. Authority.

This rule is promulgated in accordance with the Uninsured Motorist Database Program ("database") as required by Section 41-12a-803(7).

R708-32-3. Definitions.

(1) "Uninsured Motorist" means a driver who operates a vehicle in violation of the provisions of Title 41, Chapter 12a.

(2) "Database" means the Uninsured Motorist Identification Database created as per Section 41-12a-803.

(3) The terms "division" and "program" are as defined in Section 41-12a-802.

R708-32-4. Access.

(1) In accordance with Section 41-12a-803, insurance "status" information will be provided only to authorized personnel of federal, state and local governmental agencies who have access through dispatchers to the Driver License and Motor Vehicle Division's computer information screens (1027 and 1028) and to financial institutions, as defined in Section 7-1-103, for the purpose of protecting a bona fide security interest in a motor vehicle.

(2) Authorized personnel seeking information from this database will be limited to receiving the following responses:

(a) YES = Strong indication of mandatory insurance in force;

(b) NO = Strong indication mandatory insurance is not in force;

(c) EXEMPT = Vehicle is exempt from mandatory auto insurance, such as farm vehicles;

(d) NOT FOUND = Vehicle not part of insurance database; and

(e) NOT AVAILABLE = Communications with computer interrupted.

(3) Access to additional information other than "YES", "NO", "EXEMPT", "NOT FOUND," or "NOT AVAILABLE", shall be limited to the following persons who shall sign a Certificate of Understanding:

(a) Financial Responsibility Section Manager and employees;

(b) Driver License Division Director, Deputy Director, and Bureau Chiefs; and

(c) Other employees authorized by the Driver License Division Director, Deputy Director or Bureau Chiefs.

(4) Additional information, if available, may include:

(a) the vehicle owner's name and address;

(b) date of birth;

(c) driver license number;

(d) license plate number;

(e) vehicle identification number;

(f) insurance company name;

(g) policy number; and

(h) issue and expiration dates of the owner's vehicle insurance policy.

KEY: uninsured motorist database
August 8, 2006 41-12a-803(7)
Notice of Continuation May 10, 2005

R708. Public Safety, Driver License.
R708-42. Driver Address Record.
R708-42-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for requesting and disclosing a Driver Address Record in accordance with Subsection 53-3-109(1)(c)(ii).

R708-42-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-42-3. Definitions.

(1) "Driver Address Record" (DAR), means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

(a) driver's name;

(b) driver's license or driving privilege card number;

(c) driver's current residential address; and

(d) name and driver license or driving privilege card number of a person with a driver license residential address that is the same as the driver requested.

R708-42-4. Procedures.

(1) Upon receipt of a request for a DAR pursuant to Subsection 53-3-109(1)(c)(ii), the division will search its driver license files to compile and furnish a DAR on any person licensed in the state of Utah. A qualified requester may only obtain a DAR for a person who has obtained motor vehicle insurance, from the qualified requester pursuant to Title 31A Chapter 22 Part 3.

(2) DAR's shall only be released to qualified requesters in accordance with the Federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109(1)(c)(ii), and Title 63, Chapter 2.

R708-42-5. Requirements.

(1) In order to receive a DAR, the requester must:

(a) provide acceptable proof of identification that they are a qualified requester under Subsection 53-3-109(1)(c)(ii);

(b) enter into a contract with the division or its designated provider to obtain a DAR;

(c) provide the driver's name, Utah driver license or driving privilege card number and address;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information on an DAR; and

(f) comply with auditing processes and procedures as required by the division or its designated provider.

R708-42-6. Electronic Transactions.

Requests for DARs will be transacted electronically as approved by the division.

KEY: driver address record
August 8, 2006 **53-3-109(1)©**

R708. Public Safety, Driver License.
R708-43. YES or NO Notification.
R708-43-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for verifying personal identifying information in accordance with Subsection 53-3-109(1)(c)(iii).

R708-43-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-43-3. Definitions.

(1) "Yes or No Verification (YON)" means an electronic notification that information submitted by a requester matches the information on the driver license division database. For this purpose Yes verifies a match of (a) through (c), and No indicates one or more items do not match the database information, including:

(a) name;

(b) driver license, driving privilege card or identification card number; and

(c) date of birth.

(2) "Yes or No Verification including a digitized photo (YIP)" means an electronic notification that information submitted by a requester matches the information on the driver license division database and includes the most recent digitized photo.

R708-43-4. Procedures.

(1) Upon receipt of a request for verification pursuant to Subsection 53-3-109(1)(c)(iii), the division will search the driver license division database and furnish a YON or YIP on any person who has a driver license, driving privilege card or identification card in the state.

(2) The YON or YIP contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109, and Title 63, Chapter 2.

R708-43-5. Requirements.

(1) YONs or YIPs shall only be released to qualified requesters in accordance with the DPPA and Subsection 53-3-109(1)(c)(iii).

(2) In order to receive a YON or YIP, the requester must:

(a) provide acceptable proof that they are a depository institution as defined in Section 7-1-103;

(b) enter into a contract with the division or its designated provider to obtain a YON or YIP;

(c) provide the name, Utah driver license number, driving privilege number or identification card number and date of birth of the person who is the subject of the request;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information provided; and

(f) comply with auditing processes and procedures required by the division or its designated provider.

R708-43-6. Electronic Transactions.

Requests for YONs and YIPs will be transacted electronically as approved by the division.

KEY: driver license verification
August 8, 2006 53-3-109(1)©

R708. Public Safety, Driver License.
R708-44. Citation Monitoring Service.
R708-44-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for disclosing personal identifying information in accordance with Section 53-3-109(3).

R708-44-2. Authority.

This rule is authorized by Section 53-3-109(7)(f).

R708-44-3. Definitions as Used in This Chapter.

"Citation Monitoring Service (CMS)" means an electronic service whereby the Driver License Division database is monitored on a regular basis to determine if a reportable moving violation has been entered on a specific driving record within the month prior to the date of the request. The requestor will receive a "YES or NO" response that indicates whether a reportable moving violation has been entered on the driver's record during the previous month. If the information submitted by the requestor does not match a driver's record on the database, the requestor will receive an unable to locate (UTL) response.

R708-44-4. Procedures.

(1) Upon receipt of a request for a notification pursuant to Section 53-3-109(3), the division will provide this monitoring service on any person who has a Utah driver license or driving privilege card.

(2) The Driver License Division database contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Section 53-3-109 and Title 63, Chapter 2 (Government Records Access and Management Act).

R708-44-5. Requirements.

(1) CMS is only available to qualified requesters in accordance with the DPPA and Section 53-3-109(3).

(2) In order to be eligible for the CMS, the requester must:

(a) provide acceptable proof that they are an insurer as defined under Section 31A-1-301, or a designee of an insurer as defined under Section 31A-1-301;

(b) enter into a contract with the division or its designated provider to obtain this service;

(c) provide the name, date of birth, and Utah driver license or driving privilege number for the person for which they are seeking monitoring and notification;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information on the Driver License Division database; and

(f) comply with auditing processes and procedures required by the division or its designated provider.

R708-44-6. Electronic Transactions.

The Citation Monitoring Service will be transacted electronically, as approved by the division.

KEY: driver license, motor vehicle record, citation monitoring service
August 8, 2006 53-3-109(3)

R746. Public Service Commission, Administration.
R746-345. Pole Attachments.
R746-345-1. Authorization.

A. Authorization of Rules -- Consistent with the Pole Attachment Act, 47 U.S.C. 224(c), and 54-3-1,54-4-1, and 54-4-13, the Public Service Commission shall have the power to regulate the rates, terms and conditions by which a public utility, as defined in 54-2-1(15)(a) including telephone corporations as defined in 54-2-23(a), can permit attachments to its poles by an attaching entity.

B. Application of Rules -- These rules shall apply to each public utility that permits pole attachments to utility's poles by an attaching entity.

1. Although specifically excluded from regulation by the Commission in 54-2-1(23)(b), solely for the purpose of any pole attachment, these rules apply to any wireless provider.

2. Pursuant to these rules, a public utility must allow any attaching entity nondiscriminatory access to utility poles at rates, terms and conditions that are just and reasonable.

C. Application of Rate Methodology -- The rate methodology described in Section R746-345-5 shall be used to determine rates that a public utility may charge an attaching entity to attach to its poles for compensation.

R746-345-2. General Definitions.

A. "Attaching Entity" -- A public utility, wireless provider, cable television company, communications company, or other entity that provides information or telecommunications services that attaches to a pole owned or controlled by a public utility.

B. "Attachment Space" -- The amount of usable space on a pole occupied by a pole attachment as provided for in Subsection R746-345-5(B)(3)(d).

C. "Distribution Pole" -- A utility pole, excluding towers, used by a pole owner to support mainly overhead distribution wires or cables.

D. "Make-Ready Work" -- The changes to be made to a pole owner's poles, its own pole attachments, the existing pole attachments of other attaching entities, or the existing additional equipment associated with such attachments, which changes may be needed to accommodate a proposed additional pole attachment. Such make-ready work is coordinated by the pole owner and is performed by the owners of the poles or owners of the pole attachments and additional equipment or as otherwise agreed to by these owners.

E. "Pole Attachment" -- All equipment, and the devices used to attach the equipment, of an attaching entity within that attaching entity's allocated attachment space. A new or existing service wire drop pole attachment that is attached to the same pole as an existing attachment of the attaching entity is considered a component of the existing attachment for purposes of this rule. Additional equipment that is placed within an attaching entity's existing attachment space, and equipment placed in the unuseable space which is used in conjunction with the attachments, is not an additional pole attachment for rental rate purposes. All equipment and devices shall meet applicable code and contractual requirements. Pole attachments do not include items used for decorations, signage, barriers, lighting, sports equipment, or cameras.

F. "Pole Owner"-- A public utility having ownership or control of poles used, in whole or in part, for any electric or telecommunications services.

G. "Secondary Pole" -- A pole used solely to provide service wire drops, the aerial wires or cables connecting to a customer premise.

H. "Secondary Pole Attachment" -- A pole attachment to a secondary pole.

I. "Wireless Provider" -- A corporation, partnership, or firm that provides cellular, Personal Communications Systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. 332 that has been issued a covering license by the Federal Communications Commission.

R746-345-3. Tariffs and Contracts.

A. Tariff Filings and Standard Contracts -- A pole owner shall submit a tariff and standard contract, or a Statement of Generally Available Terms (SGAT), specifying the rates, terms and conditions for any pole attachment, to the Commission for approval.

1. A pole owner must petition the Commission for any changes or modifications to the rates, terms, or conditions of its tariff, standard contract or SGAT. A petition for change or modification must include a showing why the rate, term or condition is no longer just and reasonable. A change in rates, terms or conditions of an approved tariff, standard contract or SGAT will not become effective unless and until it has been approved by the Commission.

2. The tariff, standard contract or SGAT shall identify all rates, fees, and charges applicable to any pole attachment. The tariff, standard contract, and SGAT shall also include:

a. a description of the permitting process, the inspection process, the joint audit process, including shared scheduling and costs, and any non-recurring fee or charge applicable thereto;

b. emergency access provisions; and

c. any back rent recovery or unauthorized pole attachment fee and any applicable procedures for determining the liability of an attaching entity to pay back rent or any non-recurring fee or charge applicable thereto.

B. Establishing the Pole Attachment Relationship -- The pole attachment relationship shall be established when the pole owner and the attaching entity have executed the approved standard contract, or SGAT, or other Commission-approved contract.

1. Exception -- The pole owner and attaching entity may voluntarily negotiate an alternative contract incorporating some, all, or none of the terms of the standard contract or SGAT. The parties shall submit the negotiated contract to the Commission for approval. In situations in which the pole owner and attaching entity are unable to agree following good faith negotiations, the pole owner or attaching entity may petition the Commission for resolution as provided in Section R746-345-6. Pending resolution by the Commission, the parties shall use the standard contract or SGAT.

C. Make-Ready Work, Timeline and Cost Methodology -- As a part of the application process, the pole owner shall provide the applicant with an estimate of the cost of the make-ready work required and the expected time to complete the make-ready work as provided for in this sub-section. All applications by a potential attacher within a given calendar month shall be counted as a single application for the purposes of calculating the response time to complete the make-ready estimate for the pole owner. The due date for a response to all applications within the calendar month shall be calculated from the date of the last application during that month. As an alternative to all of the time periods allowed for construction below, a pole owner may provide the applicant with an estimated time by which the work could be completed that is different than the standard time periods contained in this rule with an explanation for the anticipated delay. Pole owners must provide this alternative estimate within the estimate timelines provided below. Applicants that wish to consider self-building shall inform the pole owner at the time of application that they are considering the self-build option, if available, and they would like a two-alternative make-ready bid. The pole owner and each existing attaching entity are responsible to determine what portion, if any, of the make-ready work their facilities require which may be performed through a self-build option and what conditions, if any, are associated with such self-build option. In the first alternative, the pole owner and attaching

entities would be responsible for all necessary make-ready work. For the second alternative, the pole owner and attaching entities will identify what make-ready work they will perform, if any, with an associated cost estimate, and also identify what make-ready work, if any, the owner is agreeable to have performed through a self-build option and the conditions, if any, for such self-build option.

1. For applications up to 20 poles, the pole owner shall respond with either an approval or a rejection within 45 days. At the same time as an approval is given, a completed make-ready estimate must be provided to the applicant explaining what make-ready work must be done, the cost of that work, and the time by which the work would be finished, that is no later than 120 days from receiving an initial deposit payment for the make-ready work.

2. For applications that represent greater than 20 poles, but equal to or less than .5% of the pole owner's poles in Utah, or 300 poles, whichever is lower, the time for the pole owner's approval and make-ready estimate shall be extended to 60 days, and the time for construction will remain at a maximum of 120 days.

3. For applications that represent greater than the number of poles calculated in section 3(2)(C)(2) above, but equal to or less than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the time for the approval and make-ready estimate shall be extended to 90 days, and the time for construction will be extended to 180 days.

4. For applications that represent greater than 5% of the pole owner's poles in Utah, or 3,000 poles, whichever is lower, the times for the above activities will be negotiated in good faith. The pole owner shall, within 20 days of the application, inform the applicant of the date by which the pole owner will have the make-ready estimate and make-ready construction time lines prepared for the applicant. If the applicant believes the pole owner is not acting in good faith, it may appeal to the Commission to either resolve the issue of when the make-ready estimate and construction period information should be delivered or to arbitrate the negotiations.

5. If the pole owner rejects any application, the pole owner must state the specific reasons for doing so. Applicants may appeal to the Commission if they do not agree that the pole owner's stated reasons are sufficient grounds for rejection.

6. For all approved applications, the applicant will either accept or reject the make-ready estimate. If it accepts the make-ready estimate and make-ready construction time line, the work must be done on schedule and for the estimated make-ready amount, or less, and the applicant will be billed for actual charges up to the bid amount.

7. Applicants must pay 50% of the make-ready estimate in advance of construction, and pay the remainder in two subsequent installment payments: an additional 25 percent payment when half of the work is done and the balance after the work is completed. Applicants may elect to pay the entire amount up front.

8. An applicant may, at its own discretion, exercise any of the self-build options given for the required make-ready work subject to the conditions made.

9. An applicant may reject a make-ready estimate if it wishes to contest, before the Commission, that the make-ready estimate or make-ready construction time line is not prepared in good-faith, or is unreasonable or not in the public interest.

D. Pole Attachment Placement -- All new copper cable attachments shall be placed at the lowest level permitted by applicable safety codes. In cases where an existing copper attachment has been placed in a location higher than the minimum height the safety codes require, the pole owner shall determine if the proposed attachment may be safely attached either above or below the existing copper attachment taking account of midspan clearances and potential crossovers. If these attachment locations, above or below the copper cable, comply with the applicable safety code, the attacher may attach to the pole without paying to move the copper cable. The owner of the copper cable may elect to pay the costs of having the cable moved to the lowest position as part of the attachment process, or it may elect to move the cable themselves prior to the attaching entity's attachment. If the copper cable must be moved in order for the attacher to be able to safely make its attachment, the attacher shall pay the costs associated with moving the existing copper cable.

R746-345-4. Pole Labeling.

A. Pole Labeling -- A pole owner must label poles to indicate ownership. A pole owner shall label any new pole installed, after the effective date of this rule, immediately upon installation. Poles installed prior to the effective date of this rule, shall be labeled at the time of routine maintenance, normal replacement, change-out, or relocation, and whenever practicable. Labels shall be based on a good faith assertion of ownership.

B. Pole Attachment Labeling -- An attaching entity must label its pole attachments to indicate ownership. Pole attachment labels may not be placed in a manner that could be interpreted to indicate an ownership of the utility pole. An attaching entity shall label any new pole attachment installed, after the effective date of this rule, immediately upon installation. Pole Attachments installed prior to the effective date of this rule shall be labeled at the time of routine maintenance, normal replacement, rearrangement, rebuilding, or reconstruction, and whenever practicable.

C. Exception -- Electrical power pole attachments do not need to be labeled.

R746-345-5. Rental Rate Formula and Method.

A. Rate Formula -- Any rate based on the rate formula in this Subsection shall be considered just and reasonable unless determined otherwise by the Commission. A pole attachment rental rate shall be based on publicly filed data and must conform to the Federal Communications Commission's rules and regulations governing pole attachments, except as modified by this Section. A pole attachment rental rate shall be calculated and charged as an annual per attachment rental rate for each attachment space used by an attaching entity. The following formula and presumptions shall be used to establish pole attachment rates:

1. Formula:

Rate per attachment space = (Space Used x (1/Usable Space) x Cost of Bare Pole x Carrying Charge Rate)

2. Definitions:

a. "Carrying Charge Rate" means the percentage of a pole owner's depreciation expense, administrative and general expenses, maintenance expenses, taxes, rate of return, pro-rated annualized costs for pole audits or other expenses that are attributable to the pole owner's investment and management of poles.

b. "Cost of Bare Pole" can be defined as either "net cost" or "gross cost." "Gross cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, divided by the number of poles represented in the investment amount. "Net cost" means the original investment, purchase price, of poles and fixtures, excluding crossarms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by the number of poles represented in the investment amount. A pole owner may use gross cost only when its net cost is a negative balance. If using the net or gross cost results in an unfair or unreasonable outcome, a pole owner or attaching entity can seek relief from the Commission under R746-345-5 C.

c. "Unusable Space" means the space on a utility pole below the usable space including the amount required to set the depth of the pole.

d. "Usable Space" means the space on a utility pole above the minimum grade level to the top of the pole, which includes the space occupied by the pole owner.

3. Rebuttable presumptions:

a. Average pole height equals 37.5 feet.

b. Usable space per pole equals 13.5 feet.

c. Unusable space per pole equals 24 feet.

d. Space used by an attaching entity:

(i) An electric pole attachment equals 7.5 feet;

(ii) A telecommunications pole attachment equals 1.0 foot;

(iii) A cable television pole attachment equals 1.0 foot; and

(iv) An electric, cable, or telecommunications secondary pole attachment equals 1.0 foot.

(v) A wireless provider's pole attachment equals not less than 1.0 foot and shall be determined by the amount of space on the pole that is rendered unusable for other uses, as a result of the attachment or the associated equipment. The space used by a wireless provider may be established as an average and included in the pole owner's tariff and standard contract, or SGAT, pursuant to Section R746-345-3 of this Rule.

e. The space used by a wireless provider:

(i) may not include any of the length of a vertically placed cable, wire, conduit, antenna, or other facility unless the vertically placed cable, wire, conduit, antenna, or other facility prevents another attaching entity from placing a pole attachment in the usable space of the pole;

(ii) may not exceed the average pole height established in Subsection R746-345-5(A)(3)(a).

(iii) In situations in which the pole owner and wireless provider are unable to agree, following good faith negotiations, on the space used by the wireless provider as determined in Subsection R746-345-5(A)(3)(d)(v), the pole owner or wireless provider may petition the Commission to determine the footage of space used by the wireless provider as provided in Subsection R746-345-3(C).

f. The Commission shall recalculate the rental rate only when it deems necessary. Pole owners or attaching entities may petition the Commission to reexamine the rental rate.

4. A pole owner may not assess a fee or charge in addition to an annual pole attachment rental rate, including any non-recurring fee or charge described in Subsection R746-345-3(A)(2), for any cost included in the calculation of its annual pole attachment rental rate.

B. Commission Relief -- A pole owner or attaching entity may petition the Commission to review a pole attachment rental rate, rate formula, or rebuttable presumption as provided for in this rule. The petition must include a factual showing that a rental rate, rate formula or rebuttable presumption is unjust, unreasonable or otherwise inconsistent with the public interest.

R746-345-6. Dispute Resolution.

A. Mediation -- Except as otherwise precluded by law, a resolution of any dispute concerning any pole attachment agreement, negotiation, permit, audit, or billing may be pursued through mediation while reserving to the parties all rights to an adjudicative process before the Commission.

1. The parties may file their action with the Commission and request leave to pursue mediation any time before a hearing.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties. However, the parties may jointly request a mediator from the Commission or the Division of Public Utilities.

3. A party need not pay the portion of a bill that is disputed if it has started a dispute proceeding within 60 days of the due date of the disputed amount. The party shall notify the Commission if the dispute process is not before the Commission.

B. Settlement -- If the parties reach a mediated agreement or settlement, they will prepare and sign a written agreement and submit it to the Commission. Unless the agreement or settlement is contrary to law and this rule, R746-345, the Commission will approve the agreement or settlement and dismiss or cancel proceedings concerning the matters settled.

1. If the agreement or settlement does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

2. If any issues remain unresolved, the matter will be scheduled for a hearing before the Commission.

KEY: public utilities, rules and procedures, telecommunications, telephone utility regulation
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R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.

2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.

3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.

4. "Commission" means the Tax Commission of the state of Utah.

5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.

6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.

7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.

8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.

9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.

10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.

11. "Quorum" means three or more members of the Commission.

12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.

13. "Rule" means an officially adopted Commission rule.

14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.

15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence,

facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute

passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or

2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

a) the individual's name and address;

b) a notation that the request is made in accordance with the Americans with Disabilities Act;

c) a description of the nature and extent of the individual's disability;

d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

a) the requested accommodation is being supplied; or

b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

c) the request for accommodation is denied. A reason for the denial must be included; or

d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:

Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

a) the individual's name and address;

b) the nature and extent of the individual's disability;

c) a copy of the accommodation coordinator's reply;

d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

e) a description of the accommodation desired; and

f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan

Pursuant to Utah Code Ann. Section 59-1-207.

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

a) Internal Audit;
b) Appeals;
c) Economic and Statistical; and
d) Public Information.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

a) Administration;
b) Taxpayer Services;
c) Motor Vehicle;
d) Auditing;
e) Property Tax;
f) Technology Management;
g) Processing; and
h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;

2. the strategic plan of the agency;

3. administrative rules and bulletins;

4. waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;

5. offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

6. stipulated or negotiated agreements that dispose of matters on appeal; and

7. voluntary disclosure agreements that meet the following criteria:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of $10,000 or more.

E. The commission shall retain authority for the following functions:

1. rulemaking;

2. adjudicative proceedings;

3. private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

4. internal audit processes;

5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-19. Definition of Bond Pursuant to Utah Code Ann. Section 59-1-505.

A. The bond that a taxpayer may deposit with the Tax Commission pursuant to Section 59-1-505 shall consist of one of the following:

1. a surety bond;
2. an assignment of savings account; or
3. an assignment of certificate of deposit.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14.

(1) A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period.

(3) A petition for redetermination filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute.

(4) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-21. Rulings by the Commission Pursuant to Utah Code Ann. Section 59-1-205.

A. A quorum of the commission must participate in any order which constitutes final agency action on an adjudicative matter.

B. The party charged with the burden of proof or the burden of overcoming a statutory presumption shall prevail only if a majority of the participating commissioners rules in that party's favor.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;
2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;
3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;
4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;
5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and
6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.

A. All matters shall be designated as formal proceedings and set for a prehearing conference, an initial hearing, or a scheduling conference pursuant to R861-1A-26.

B. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.

A. At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

1. Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

2. Once assigned, the presiding officer will preside at all steps of the formal proceeding except as otherwise indicated in these rules or as internal staffing requirements dictate.

B. Unless waived by the petitioner, a formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, and may also involve a formal hearing on the record.

1. Initial Hearing.

a) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

b) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute at the conclusion of the initial hearing. As to those matters, a party must pursue a formal hearing and final agency action before pursuing judicial review of unsettled matters.

2. Formal Hearing on the Record.

a) Formal hearings on the record shall be conducted by a presiding officer under 2.b) or by the commission sitting as panel under 2.c).

b) Except as provided in 2.c., all formal hearings will be

heard by the presiding officer.

(1) Within the time period specified by statute, the presiding officer shall sign a decision and order in accordance with Section 63-46b-10 and forward the decision to the Commission for automatic agency review.

(2) A quorum of the commission shall review the decision. If a majority of the participating commissioners concur with the decision, a statement affirming the decision shall be affixed to the decision and signed by the concurring commissioners to indicate that the decision represents final agency action. The order is subject to petition for reconsideration or to judicial review.

(3) If, on agency review, a majority of the commissioners disagree with the decision, the case may be remanded to the presiding officer for further action, amended or reversed. If the presiding officer's decision is amended or reversed, the commission shall issue its decision and order, and that decision and order shall represent final agency action on the matter.

c) The commission, on its own motion, upon petition by a party to the appeal, or upon recommendation of the presiding officer, may sit as a panel at the formal hearing on the record if the case involves an important issue of first impression, complex testimony and evidence, or testimony requiring a prolonged hearing.

(1) A panel of the commission shall consist of two or more commissioners

(2) An order issued from a hearing before a panel of commissioners shall constitute final agency action, and it is subject to petition for reconsideration or to judicial review.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 through 63-46b-11.

A. Prehearing and Scheduling Conference.

1. At the conference, the parties and the presiding officer shall:

a) establish ground rules for discovery;

b) discuss scheduling;

c) clarify other issues;

d) determine whether to divert the action to a mediation process; and

e) determine whether the initial hearing will be waived and whether the commission will preside as a panel at the formal hearing on the record pursuant to R861-1A-24.

2. The prehearing and scheduling conference may be converted to an initial hearing upon agreement of the parties.

B. Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

C. Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

D. Representation.

1. A party may pursue a petition without assistance of counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

a) Legal counsel must enter an appearance.

b) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action.

c) All documents will be directed to the party's representative. Documents may be transmitted by facsimile number, e-mail address or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's street address as shown in the petition for agency action.

2. Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office.

E. Subpoena Power.

1. The presiding officer may issue subpoenas to secure the attendance of witnesses or the production of evidence.

a) The party requesting the subpoena must prepare it and submit it to the presiding officer for signature.

b) Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

F. Motions.

1. Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

2. Continuance. A continuance may be granted at the discretion of the presiding officer.

3. Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

a) The default order shall include a statement of the grounds for default and shall be delivered to all parties by electronic means or, if electronic transmission is unavailable, by U.S. mail.

b) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

4. Ruling on Procedural Motions. Procedural motions may be made during the hearing or by written motion.

a) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

b) Upon the filing of any motion, the presiding officer may:

(1) grant or deny the motion; or

(2) set the matter for briefing, hearing, or further proceedings.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.

A. Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

B. The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence

possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

C. At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Agency Review and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.

A. Agency Review.

1. All written decisions and orders shall be submitted by the presiding officer to the commission for agency review before the decision or order is issued. Agency review is automatic, and no petition is required.

B. Reconsideration. Within 20 days after the date that an order is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

1. The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied.

(a) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(b) For purposes of calculating the 30 day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

2. If no petition for reconsideration is made, the 30 day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63- 46b-1.

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue mediation any time before the formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

1. The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

2. The settlement agreement shall be adopted by the commission if it is not contrary to law.

3. If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

4. If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities

under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must

provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

A. "TaxExpress" means the filing of tax returns and tax payment information by telephone and Internet web site.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's TaxExpress system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

E. Taxpayers who file an individual income tax return electronically and who met the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (4)(a) or (4)(b).

(5) Information that may be disclosed under Section 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).

(6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

(b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific

commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

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Notice of Continuation April 22, 2002 **41-1a-209**
59-1-205
59-1-207
59-1-210
59-1-301
59-1-304
59-1-401
59-1-403
59-1-404
59-1-501
59-1-502.5
59-1-505
59-1-602
59-1-705
59-1-1004
59-10-512
59-10-532
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59-10-535
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59-10-544
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59-2-212
59-2-701
59-2-705
59-2-1003
59-2-1004
59-2-1006
59-2-1007
59-2-704
59-2-924
59-7-517
63-46a-4
63-46b-1
76-8-502
76-8-503
59-2-701
63-46b-3
63-46b-4
63-46b-5
63-46b-6
63-46b-7
through
63-46b-11
63-46b-13
63-46b-14
63-46b-21
63-46a-3(2)
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108.

A. To title or register a vehicle previously registered in a nontitle state, an applicant must submit both of the following:

1. the last certificate of registration;

2. a lien search from the recording jurisdiction or an "Affidavit of Ownership" in lieu of the lien search.

B. To title or register a repossessed vehicle, an applicant must submit both of the following:

1. the outstanding certificate of title, with the lien recorded in favor of the repossessor;

2. an approved affidavit of repossession, signed by the lien holder recorded on the certificate of title.

C. To title or register a vehicle previously owned by the U.S. Government, an applicant must submit a Certificate of Release of a Motor Vehicle, Standard Form No. 97.

D. To title or register a vehicle foreclosed by advertisement, an applicant must submit each of the following:

1. a certificate of sale bearing the notarized signature of the person who conducted the sale. The certificate must contain the following information:

a. date of sale;

b. name of person to whom the vehicle was sold;

c. complete description of the vehicle;

d. amount due on the contract;

e. date that the amount due became delinquent; and

f. amount received from the sale of the vehicle.

2. a copy of the notice sent to the owner and lien holder of record;

3. proof that notice was published two consecutive weeks prior to sale. If the notice was not published in a newspaper, an affidavit of posting of notices must be furnished. Posting must be at least ten days prior to sale.

E. To title or register a vehicle transferred by divorce decree an applicant must submit each of the following:

1. a certified copy of the divorce decree;

2. the outstanding certificate of title;

3. the last registration certificate.

F. To title or register a vehicle when the current owner is declared incompetent, an applicant must submit each of the following:

1. the outstanding certificate of title, endorsed for transfer by the guardian;

2. the last registration certificate;

3. a certified copy of the court order appointing the guardian.

G. To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

1. legal basis under which the vehicle was impounded and sold:

2. a complete description of the vehicle;

3. name of the purchaser;

4. the notarized signature of the state, city, or county official who conducted the sale.

H. To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the properly notarized power of attorney to the Tax Commission.

I. To title or register a vehicle transferred from a deceased owner when a survivorship affidavit is not applicable, the applicant must submit the outstanding certificate of title and the last registration card. In addition, the applicant must submit one of the following:

1. a certified copy of the final decree of distribution;

2. an order from the court confirming sale;

3. an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

a. When the title is issued in joint ownership where the owners names are connected with "and" or a "/" the survivor may transfer ownership by endorsement only and by furnishing proof of death of the other joint owner.

J. The Tax Commission may issue a title or a dismantle permit upon receipt of a court order or upon receipt of an affidavit and surety bond when satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership.

1. The affidavit must contain each of the following:

a) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;

b) an explanation of how the vehicle was obtained and from whom;

c) a statement indicating any outstanding liens or encumbrances on the vehicle;

d) a statement indicating where the vehicle was last titled or registered;

e) a description of the vehicle;

f) any other items pertinent to the acquisition or possession of the vehicle.

2. The Tax Commission may issue a title or a dismantle permit upon receipt of an affidavit and an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit if the vehicle satisfies each of the following conditions:

a) the vehicle is not a motorcycle;

b) the vehicle has a value of $1,000 or less at the time of application;

c) the vehicle is six model years old or older.

3. If the vehicle has a value of $1,000 or less at the time of application, and the vehicle is not more than six model years old, or the vehicle is a motorcycle, a title or dismantle permit may not be issued until the vehicle is physically examined by a qualified investigator appointed by the Tax Commission.

4. If the vehicle has a value in excess of $1,000, the Tax Commission may require a surety bond in addition to the affidavit. The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the Tax Commission.

K. To title or register a specially constructed or rebuilt vehicle, an applicant shall furnish an affidavit of construction, explaining the acquisition of essential parts and the date construction was completed. The affidavit must be supported by bills of sale or invoices for the parts.

1. An application for an identification number must be completed. The assigned number shall be affixed to the vehicle and inspected by a peace officer or an authorized agent of the Tax Commission.

2. The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

3. If satisfactory evidence of ownership is lacking, the procedure outlined in J. shall be followed.

4. In the case of a dune buggy or similar type vehicle where the complete running gear and chassis of another vehicle is used, the identification number of the vehicle used as the primary base of the rebuilt vehicle shall be used for identification and must correspond to the identification number on the surrendered certificate of title.

5. The rebuilt vehicle shall retain the manufacturer's name as it appeared on the surrendered title. However, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission. The type of body and vehicle model may be changed to more accurately describe the

vehicle. If a new body is used, the year model shall be determined by the date the rebuilding is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

R873-22M-7. Transfer of License Plates and Registration for an Increase of Gross Laden Weight Pursuant to Utah Code Ann. Section 41-1a-701.

A. License plates and registration may not be transferred under any of the following conditions:

1. The license plates are lifetime trailer plates issued pursuant to Section 41-1a-228.

2. The newly acquired vehicle requires a different registration period from that of the vehicle previously owned.

B. License plates may be transferred only if the application for transfer is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce, or court order.

C. Transferred license plates may not be displayed upon the newly acquired vehicle until the registration has been completed and a new registration card has been issued.

D. The expiration date on the new registration card shall be the same as that appearing on the original registration.

E. If registration is based on gross laden weight and the gross laden weight of a vehicle is increased during the registration year, additional registration fees shall be collected based on the following computations:

1. Subtract the registration fee for the current year from the registration fee for the increased weight.

2. Multiply that difference by the percentage of the year for which the vehicle will be registered at the increased weight.

F. The holder of a three-month registration who seeks to increase the gross laden weight of a vehicle shall pay the full three-month registration fee for the increased weight.

R873-22M-8. Expiration of Registration Pursuant to Utah Code Ann. Sections 41-1a-211 and 41-1a-215.

A. Registration issued for a period of three calendar months, six calendar months, or nine calendar months, shall expire at midnight on the last day of the third, sixth, or ninth calendar month from the date issued.

B. If an unexpired registration issued for three calendar months, six calendar months, or nine calendar months is being renewed, the expiration date shall be three calendar months, six calendar months or nine calendar months from the month the previous registration would have expired.

C. When a temporary permit is issued as authorized under Section 41-1a-211, the registration period shall begin on the first day of the calendar month in which the first temporary permit was issued.

R873-22M-11. Copies of Registration Cards Pursuant to Utah Code Ann. Section 41-1a- 214.

A. In lieu of an original registration card, a copy of a registration card may be carried in an intrastate commercial vehicle or a vehicle owned or leased by this state or any of its political subdivisions. Both the front and back of the registration card must be copied.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The month decal shall be displayed on the license plate in the left position, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

R873-22M-15. Assigned and Replacement Vehicle Identification Number System Pursuant to Utah Code Ann. Section 41-1a-801.

A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.

B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2, to determine ownership.

C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.

1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.

2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN.

3. The VIN plate must, under the supervision of the Tax Commission, be attached to the unit as follows:

a) passenger and commercial vehicles:

(1) primary location is on a portion of the left front door lock post;

(2) secondary location is on a portion of the firewall, either left or right side, whichever is most advantageous; (This location is to be selected only when the VIN plate cannot be attached to the lock posts.)

b) motorcycles, snowmobiles, and outboard motors:

(1) as near as possible to the original number location; (If an original number, the VIN plate shall be affixed to the headstock.)

c) trailers:

(1) primary location is on a portion of the right side of the tongue or drawbar near the body;

(2) secondary location is on a portion of the metal frame near the front right corner;

d) on units where it is not practical to install rivets, the VIN plate may be attached by adhesive only.

D. The Motor Vehicle Division is responsible for the

control, security, and distribution of the VIN plates and will keep the necessary records and require regular reports from designated branch offices.

E. Following are the specifications of the official Utah assigned identification plate and attachment accessories.

1. Size will be 1 inch x 3 inches x .003 inch deep etched to .002 inch with 1/8 inch radius corners.

2. Material will be color anodized aluminum foil.

3. Color will be blue background with silver lettering.

4. Backing will be laminated with permanent pressure sensitive adhesive.

5. Control numbers will be serialized with 1/8 inch permanent embossed or anodized numbers.

6. The state seal will be in the left center, with appropriate rivet areas designated.

7. The assigned number will be prestamped using the prefix of "UT." The number series to include one letter and five digits with the letter to identify the unit type as follows:

TABLE

a)	Passenger and Commercial	P00001
b)	Motorcycles	M00001
c)	Trailers	T00001
d)	Reconstructed vehicle	R00001
e)	Outboard Motors	E00001
f)	Snowmobiles	S00001

R873-22M-16. Authorization to Issue a Certificate of Title Pursuant to Utah Code Ann. Section 41-1a-104.

A. A lienholder who lawfully repossesses a vehicle may apply for a certificate of title by paying the title fee and filing all of the following documents:

1. the outstanding Utah certificate of title showing the lien recorded;

2. a notarized affidavit of repossession, signed by the lienholder of record;

3. an application for title, properly signed and notarized.

B. If the purpose of the certificate of title is to record a new lien, or to rerecord a lien, and there is no change in the registered owner, all of the following are required:

1. the outstanding Utah certificate of title showing a release of all prior liens;

2. an application for title, properly signed and notarized;

3. the title fee.

C. In order to issue a new certificate of title showing the assignee as the lienholder, an applicant shall submit all of the following:

1. the outstanding Utah certificate of title with the lien recorded;

2. an application for title showing the registered owner and the new lienholder;

3. the title fee.

D. In lieu of the required owner's signature under Subsection C.2., the application may be stamped "Assignment of Lien Pursuant to Section 41-1a-607."

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

A. An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

1. The yard must be identified by a conspicuously placed, well-maintained sign that:

a) is at least 24 square feet in size;

b) includes the business name, address, phone number, and hours of business; and

c) displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.

2. The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.

3. The yard must have adequate lighting.

4. A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.

5. Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.

6. An office shall be located on the premises of the yard.

a) The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.

b) If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.

c) If a central office is approved under Subsection 6.b) above, the signs of all storage areas must provide the location of the office.

7. The yard shall provide compressed air and battery boosting capabilities at no additional cost.

B. Persons who can demonstrate an ownership interest in a car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

1. An individual has ownership interest in the vehicle if he:

a) is listed as a registered owner or lessee of the vehicle; or

b) has possession of the vehicle title.

2. An individual must show picture identification as evidence of his ownership interest.

3. The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

C. Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

D. Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the Tax Commission at the time the vehicles are sold.

E. The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the Tax Commission.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-112.

A. "Aircraft" is as defined in Section 72-10-102.

1. Aircraft includes fixed wing airplanes, balloons, airships, and any other contrivance subject to the registration requirements of the Federal Aviation Administration (FAA).

2. Aircraft does not include ultralight vehicles or hang gliders.

B. For purposes of this rule, all aircraft that meet requirements for registration by the FAA are subject to annual registration in this state. FAA registration documents must be made available for review at the time application for state

registration is made.

C. The registration period is from January 1 through December 31. Newly purchased aircraft and aircraft moved to Utah from another state shall be registered immediately. A grace period to January 31 is allowed for renewal registrations.

D. A registration fee shall be collected at the time of registration. This fee shall be paid every time the registration changes and every time the registration is renewed.

E. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the registration fee shall be prorated based on the number of months remaining in the registration period.

1. For Purposes of determining the number of months remaining in the registration period, the month during which the aircraft is originally registered shall be considered a full month.

2. For example, if an aircraft is newly registered in Utah on July 31, 50 percent of the registration fee shall be paid at the time of original registration.

F. Aircraft assessed as part of an airline by the Tax Commission are exempt from the registration requirements of Section 72-10-109. Aircraft centrally assessed by the Tax Commission and not part of an airline remain subject to taxation as property and are subject to the registration requirements of Section 72-10-109.

G. Aircraft not legally registered are subject to seizure and impound under the provisions of Section 72-10-112.

H. The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.

I. The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal. Decals must be applied and maintained in a manner that permits identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

R873-22M-22. Salvage Certificate and Branded Title Pursuant to Utah Code Ann. Sections 41-1a-522, 41-1a-1001, 41-1a-1004, and 41-1a-1009 through 41-1a-1011.

A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.

B. The Utah registration of a vehicle qualifying for any of the following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:

1. salvage vehicle,

2. dismantled vehicle,

3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;

4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and

5. manufacturer buyback nonconforming vehicle.

C. For purposes of Section 41-1a-1001, the cost to repair or restore a vehicle for safe operation is the total cost shown on a certified and notarized repair order or estimate from an authorized representative of an insurance adjusting firm, or a bonded Utah automobile dealer or body shop. The repair order or estimate must be current at the time of application and must show all costs, including a detailed list of all parts, materials, and labor, required to repair the vehicle.

R873-22M-23. Registration Information Update for Vintage Vehicle Special Group License Plates Pursuant to Utah Code Ann. Section 41-1a-1209.

A. The registration information update for vintage vehicle plates required by Section 41-1a-1209 shall be due on July 1, 1995, and every five years thereafter.

R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.

A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration.

1. Cosmetic repairs include:

a) cracks or chips in windows if the vehicle will pass a safety inspection;

b) paint chips or scratches that do not extend below the rust preventive primer coating;

c) decals or decorative paint;

d) decorative molding and trim made from plastic, light metal, or other similar material;

e) hood ornaments;

f) wheel covers;

g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;

h) vinyl roof covers or imitation convertible tops;

i) rubber inserts in bumpers or bumper guards; and

j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.

2. Cosmetic repairs do not include:

a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;

b) repair or replacement of any sheet metal;

c) repair or replacement of exterior or interior body panels;

d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and

e) cracks or chips in windows if the vehicle will not pass a safety inspection.

3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division.

B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:

1. Mitchell Collision Estimating Guide;

2. Motor Estimating Guide;

3. Delmar Auto Series Complete Automotive Estimating;

4. CCC Autobody Systems EZEst Software;

5. ADP Collision Estimating Services; or

6. an equivalent estimating guide recognized by the industry.

C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.

R873-22M-25. Written Notification of a Salvage Certificate or Branded Title Pursuant to Utah Code Ann. Section 41-1a-1004.

A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

B. Written notification that a vehicle has been issued a salvage certificate or branded title shall be made to a prospective purchaser on a form approved by the Administrator of the Motor Vehicle Enforcement Division.

C. The form must clearly and conspicuously disclose that the vehicle has been issued a salvage certificate or branded title.

D. The form must be presented to and signed by the prospective purchaser and the prospective lienholder, if any, prior to the sale of the vehicle.

E. If the seller of the vehicle is a dealer, the form must be prominently displayed in the lower passenger-side corner of the windshield for the period of time the vehicle is on display for sale.

F. The original disclosure form shall be given to the purchaser and a copy shall be given to the new lienholder, if any. A copy shall be kept on file by the seller for a period of three years from the date of sale if the seller is a dealer.

R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.

A. Each certified vehicle inspector shall independently determine:

1. if one or more interim inspections are required; and

2. when any required interim inspection shall be made.

B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.

C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").

1. Repairs must be performed in licensed body shops.

2. All repairs must be certified by an individual who:

a) owns or is employed by that body shop;

b) has repaired the vehicle or supervised any repairs he did not make;

c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and

d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.

D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.

E. A person who repairs or replaces major damage identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.

R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421.

(1) Except as otherwise provided, a special group license plate shall consist of a symbol affixed to the left-hand side of the plate, followed by five characters. The first four characters shall be numbers and the fifth shall be a letter.

(2) (a) Legislature special group license plates shall carry the letter combination SEN or REP with the number of the district from which the legislator was elected or appointed.

(b) A state legislator may register a maximum of two vehicles with Legislature special group license plates.

(c) Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year.

(3) (a) United States Congress special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

(b) Upon leaving office, a member of Congress may not display United States Congress special group license plates on any motor vehicle. A member of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year.

(4) Survivor of the Japanese attack on Pearl Harbor special group license plates may be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service; or

(b) present evidence of membership in the Pearl Harbor Survivors Association.

(5) Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans who provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating that the veteran was classified as a prisoner of war.

(6) Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart; or

(b) present evidence of current membership in the Military Order of the Purple Heart.

(7) An applicant for a National Guard special group license plate must present a current military identification card that shows active membership in the Utah National Guard.

(8) The issuance, renewal, surrender, and design of disability special group license plates and windshield placards shall be subject to the provisions of the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991), which is adopted and incorporated by reference.

(9) (a) An applicant for a licensed amateur radio operator special group license plate shall present a current Federal Communication Commission (FCC) license.

(b) The license plate number for a licensed amateur radio operator special group license plate shall be the same combination of alpha and numeric characters that comprise the FCC assigned radio call letters of the licensed operator.

(c) Only one set of licensed amateur radio operator special group license plates may be issued per FCC license.

(10) A farm truck special group license plate may be issued for a vehicle that is qualified to register as a farm truck under Section 41-1a-1206.

(11) (a) To qualify for a firefighter special group license plate, an applicant must present one of the following:

(i) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

(ii) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

(iii) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

(iv) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

(b) The division shall revoke a firefighter special group license plate issued under Section 41-1a-418 upon receipt of written notification from the head of a firefighting entity indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the firefighting entity has notified the individual described in Subsection (11)(b)(i) that the license plate will be

revoked.

(12) An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must reregister the vehicle and obtain new license plates.

R873-22M-28. Option to Exchange Horseless Carriage License Plates Issued Prior to July 1, 1992, Pursuant to Utah Code Ann. Section 41-1a-409.

A. The registered owner of a vehicle that is forty years old or older and for which a horseless carriage license plate was issued prior to July 1, 1992, may exchange that plate at no charge for a vintage vehicle special group license plate issued after July 1, 1992.

R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-408.

A. A removable windshield placard is a two-sided placard, renewable on an annual basis, which includes on each side:

1. the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

2. an identification number;

3. a date of expiration which is one year from the later of the initial issuance of the placard or the most recent renewal of the placard; and

4. a facsimile of the Great Seal of the State of Utah.

B. Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

1. The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

2. An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

3. A physician's certification is not required for renewal of a removable windshield placard.

4. The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

5. The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

C. A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

1. the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

2. an identification number;

3. a date of expiration not to exceed six months from the date of issuance; and

4. a facsimile of the Great Seal of the State of Utah.

D. Upon application, a temporary removable windshield placard shall be issued.

1. The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

2. Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

3. The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

4. The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

E. Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

R873-22M-30. Standards for Issuance of Original Issue License Plates Pursuant to Utah Code Ann. Section 41-1a-416.

A. "Series" means the general alpha-numeric sequence from which plate numbers are assigned.

B. An original issue license plate is unique and does not conflict with existing plate series in the state if the particular plate number is not currently registered or displayed on the motor vehicle master file record.

R873-22M-31. Determination of Special Interest Vehicle Pursuant to Utah Code Ann. Section 41-1a-102.

A. The division shall maintain a list of all vehicles currently eligible for classification as special interest vehicles.

1. A request for the classification of a vehicle as a special interest vehicle shall be approved if the vehicle is on the list.

2. If a vehicle not on the list qualifies for classification as a special interest vehicle pursuant to Section 41-1a-102, the division director shall add that vehicle to the list.

R873-22M-32. Rescinding Dismantling Permit Pursuant to Utah Code Ann. Section 41-1a-1010.

A. For purposes of Section 41-1a-1010, a Utah certificate of title does not include a salvage certificate, an Affidavit of Facts, or Tax Commission form TC-839, Certificate of Sale.

B. An applicant with a vehicle eligible for retitling under Section 41-1a-1010 shall receive a title consistent with the title of the vehicle at the time of application for a permit to dismantle.

R873-22M-33. Private Institution of Higher Education Pursuant to Utah Code Ann. Section 41-1a-408.

A. "Private institution of higher education" means a private institution that is accredited pursuant to Section 41-1a-408 and that issues a standard collegiate degree.

B. "Standard collegiate degree" means an associate, bachelor's, master's, or doctorate degree.

R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

(1) The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.

(2) Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:

(a) Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

(b) Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and eliminatory functions. Additionally, "69" formats are prohibited unless used in a combination with the vehicle make, model, style, type, or commonly used or readily understood abbreviations of those terms, for example, "69 CHEV."

(c) Combinations of letters, words, or numbers that connote the substance, paraphernalia, sale, user, purveyor of, or physiological state produced by any narcotic, intoxicant, or illicit drug.

(d) Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

(e)(i) Combinations of letters, words, or numbers that express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(ii) Examples of letters, words, or numbers described in Subsection (2)(e)(i) include words, signs, or symbols that represent:

(A) illegal activity;

(B) organized crime associations; or

(C) gang or gang terminology.

(iii) The division shall consult with local, state, and national law enforcement agencies to establish criteria to determine whether a combination of letters, words, or numbers express affiliations or actions that may be construed to suggest endangerment to the public welfare.

(3) If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.

(4) The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:

(a) translation from foreign languages;

(b) an upside down or reverse reading of the requested format; and

(c) the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.

(5) The director shall consider the applicant's declared definition of the format, if provided.

(6) If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.

(7) If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under Subsection R873-22M-34(1), the division shall again review the format.

(8) If the division determines pursuant to Subsection R873-22M-34(2) that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in Subsections (3) through (7).

(9) A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

(10) If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within six months of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

R873-22M-36. Access to Protected Motor Vehicle Records Pursuant to Utah Code Ann. Section 41-1a-116.

A. "Advisory notice" means:

1. notices from vehicle manufacturers, the manufacturers' authorized representative, or government entities regarding information that is pertinent to the safety of vehicle owners or occupants; and

2. statutory notices required by Sections 38-2-4 and 72-9-603 or by other state or federal law directing a party to mail a notice to a vehicle owner at the owner's last known address as shown on Motor Vehicle Division records.

B. Telephone accounts.

1. Public records may be released by phone to any person who has established a telephone account pursuant to Section 41-1a-116 (7).

2. A person who is authorized to access protected records must submit a written request in person, by mail, or by facsimile to the Motor Vehicle Division. Protected records may be released by phone to a person who has established a telephone account only under the following conditions:

a) The applicant for a telephone account must complete an application form prescribed by the Commission annually.

b) Protected records may be released by phone to private investigators, tow truck operators or vehicle mechanics who are licensed to conduct business in that capacity by the appropriate state or local authority.

c) Towers and mechanics are entitled to access protected records only for the purpose of making statutory notification of the owner at the last known address according to motor vehicle records. Prior to release of the information, the tower or mechanic must deliver or fax to the Motor Vehicle Division a copy of the work order or other evidence of a possessory lien on the vehicle. The lien claim must arise under a statute that requires notification of the vehicle owner at the owner's last known address according to state motor vehicle records.

C. An authorized agent of an individual allowed access to protected records under Section 41-1a-116 must evidence a signed statement indicating that he is acting as an authorized representative and the extent of that representative authority.

D. Utah law governs only the release of Utah motor vehicle records. The Motor Vehicle Division shall not release out-of-state motor vehicle registration information.

R873-22M-37. Standard Issue License Plates Pursuant to Utah Code Ann. Sections 41-1a-402 and 41-1a-1211.

A. In the absence of a designation of one of the standard issue license plates at the time of the license plate transaction, the license plate provided shall be the statehood centennial license plate.

B. Any exchange of one type of standard issue license plate for the other type of standard issue license plate shall be subject to the plate replacement fee provided in Section 41-1a-1211.

R873-22M-40. Age of Vehicle for Purposes of Safety Inspection Pursuant to Utah Code Ann. Section 53-8-205.

A. The age of a vehicle, for purposes of determining the frequency of the safety inspection required under Section 53-8-205, shall be determined by subtracting the vehicle model year from the current calendar year.

KEY: taxation, motor vehicles, aircraft, license plates
August 7, 2006
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41-1a-102
41-1a-104
41-1a-108
41-1a-116
41-1a-211
41-1a-215
41-1a-214
41-1a-401
41-1a-402
41-1a-408
41-1a-409
41-1a-411
41-1a-413
41-1a-414
41-1a-416
41-1a-418
41-1a-419
41-1a-420
41-1a-421
41-1a-522
41-1a-701
41-1a-1001
41-1a-1002
41-1a-1004
41-1a-1009
through
41-1a-1011
41-1a-1101
41-1a-1209
41-1a-1211
41-1a-1220
41-6-44
53-8-205
59-12-104
59-2-103
72-10-109 through 72-10-112
72-10-102

R986. Workforce Services, Employment Development.
R986-600. Workforce Investment Act.
R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the additional penalty under R986-100-118 do not apply. Although a WIA applicant must complete an application as provided in R986-100-111, not all of the information requested in that rule is necessary for WIA applicants.

R986-600-602. Workforce Investment Act (WIA).

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding employment to achieve self-sufficiency.

(3) Services are available for the following groups: adult, dislocated workers, and youth.

R986-600-603. Youth Services.

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide youth services or the services may be provided under contract as determined by competitive bid.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, supportive services, and follow-up services.

(c) A bonus/incentive/stipend may be paid to provide recognition of achievement to eligible youth.

R986-600-604. Adults, Youth, and Dislocated Workers.

The Department offers three levels of service for adults, youth and dislocated workers:

(1) core services,

(2) intensive services,

(3) training services.

R986-600-605. Core Services.

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

(a) providing the following informational resources:

(i) outreach, intake, and orientation to, and information about, available services, including resource and referral services;

(ii) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training and education services.

(iv) performance measures with respect to the one-stop delivery system;

(b) assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) follow-up services will be provided for a period of not less than 12 months after active participation ends for all youth. If requested, follow-up services will also be provided for 12 months after the first day of employment to adults and dislocated workers who have been placed in unsubsidized employment and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIA, food stamps, other supportive services such as child care, medical services, and transportation.

R986-600-606. Intensive Services.

(1) Intensive services are available to adults and dislocated workers:

(a) who are unemployed, registered for services with the Department, and who desire employment; or

(b) who are employed, registered for services with the Department, meet the self-sufficiency definition, and need to improve or change their current employment status. Self-sufficiency for WIA is defined as:

(i) declared income from the customer's primary job is less than the WIA income eligibility standards as found in R986-600-617(4) for a family of eight; or

(ii) the customer is at risk of losing his or her current level of income as evidenced by;

(A) a notice of lay-off or closure,

(B) the inability to retain his or her current job due to changes such as the requirement for increased skills,

(C) technological or industry changes, or

(D) the potential future income from the customer's primary job will be less than the WIA income eligibility standards for a family of eight.

(2) Intensive services are available to youth who:

(a) require additional assistance to complete an educational program or to secure and hold employment, and

(b) meet the regional service priority level.

(3) Intensive services for adults, dislocated workers and youth consist of:

(a) an assessment as provided in R986-600-620,

(b) development of an employment plan as provided in R986-600-621.

(c) short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training,

(d) case management, counseling and career planning, and

(e) supportive services.

(4) Additional intensive services available to youth include:

(a) leadership development,

(b) mentoring,

(c) comprehensive guidance and counseling, and

(d) follow-up services.

R986-600-607. Training Services.

(1) If the client establishes appropriateness, training services are available to adults and dislocated workers:

(a) who are unable to achieve self-sufficiency through intensive services.

(2) Training services include employment related education and work site learning.

(3) Training services are available to youth who:

(a) require additional assistance to complete an educational program or to secure and hold employment, and

(b) meet the regional service priority level.

(4) Training services for youth consist of;

(a) tutoring,

(b) alternative school,

(c) occupational skills training,

(d) paid and unpaid internships, and/or

(e) summer youth employment opportunities.

R986-600-608. Eligibility Requirements, General Definition.

(1) Core services are available to all customers.

(2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult (18 and over) and dislocated workers. Eligibility requirements for intensive and training services must be determined before an adult, youth, or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department or youth contract provider will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

R986-600-609. Citizenship, Alienage and Residency Requirements.

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

R986-600-610. Selective Service Registration Requirements.

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, which includes youth services.

R986-600-611. Income Eligibility Requirements.

(1) Applicants for all youth and adult programs must meet the income eligibility requirements in this rule.

(2) Dislocated workers do not need to meet income eligibility requirements.

(3) Up to 5% of the youth clients served do not need to meet the income eligibility requirements but must have barriers as determined by the Department. A list of current, eligible barriers is available at the Department.

R986-600-612. Prioritization Factors Used for Determining Eligibility.

(1) For adults and dislocated workers, in addition to meeting the eligibility requirements found in rules R996-600-608 through R996-600-611, the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department.

(2) When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.

(3) WIA Youth Councils set regional priority levels for services for youth based on the needs of youth in specific regions or sub-region areas.

(4) Because the funding is separate and distinct for each program, the prioritization factors operate independently for each of the two affected programs (adult and youth).

(5) Veterans will receive priority over non-veterans.

R986-600-613. Categorical Income Eligibility.

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless. Categorical income eligibility does not apply to expedited food stamps.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule except as provided in rule R986-600-611(3).

R986-600-614. How to Determine Who Is Included in the Family.

Family size must be determined to establish income eligibility for adult and youth services. Family size is determined by counting the maximum number of family members in the residence during the previous six months, not including the current month. Family size must be verified only if the Department is using family income to determine low-income eligibility for adult or youth services.

(1) A customer can be considered a "family" of one, if the customer is:

(a) age 18 or older and has been living on his or her own for the last six months, not including the current month;

(b) emancipated by marriage or court order;

(c) an adult child, age 22 or older, living with his or her parents and applying on his or her own behalf;

(d) in the custody of the state at the time eligibility is determined, or

(e) living alone or with a family and has a verifiable disability that is a substantial barrier to employment.

(2) A 'family' is generally described as two or more persons related by blood, marriage, or decree of court, living in a single residence. A dependent child is a child the parent or guardian claimed as a dependent of the parent or guardian's tax return.

(a) Family members included in the income determination:

(i) A husband and wife and dependent children age 21 and under;

(ii) A parent or legal guardian and dependent children age 21 and under; or

(iii) A husband and wife, if there are no dependent children.

(b) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(c) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

R986-600-615. Assets.

Assets are not counted when determining eligibility for

WIA services.

R986-600-616. Countable Income.

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

(a) money, wages, and salaries before any deductions,

(b) net receipts from self-employment, including farming,

(c) Job Corps payments to participants,

(d) railroad retirement,

(e) strike benefits from union funds,

(f) workers' compensation benefits,

(g) veterans' payments, except disability payments,

(h) training stipends,

(i) alimony,

(j) military family allotments or other regular support from an absent family member or someone not living in the household,

(k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,

(l) any insurance, annuity, regular disability, and social security payments, other than social security disability (SSI or SSDI) or veterans disability.

(m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),

(n) dividends,

(o) interest,

(p) net rental income,

(q) net royalties, including tribal payments from casino royalties,

(r) periodic receipts from estates or trusts, and

(s) net gambling or lottery winnings.

(2) Excludable income, which is income that is not counted, is:

(a) cash payments under a Federal, state or local public assistance program, including FEP, FEPTP, GA, WTE, SSI, RRP, or Emergency Assistance,

(b) payments received from any governmental unit for adoption assistance,

(c) child support,

(d) unemployment compensation,

(e) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,

(f) SSDI, and veterans disability payments,

(g) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some work-study programs,

(h) foster care payments,

(i) tax refunds,

(j) gifts,

(k) loans,

(l) lump-sum inheritances,

(m) one-time insurance payments or compensation for injury,

(n) Earned Income Credit from the IRS,

(o) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,

(p) benefit payments to veterans under 38 U.S.C 4212, part 3,

(q) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and

(r) other amounts specifically excluded by federal statute.

R986-600-617. How to Calculate Income.

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually. If necessary, the Department can make a best estimate or year-to-date estimate based on available records.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

R986-600-618. Dislocated Worker.

(1) A dislocated worker is an individual who meets, or has met within the past 24 months, one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, including military service, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any major layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive available services other than training, intensive, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated

worker eligibility. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

R986-600-619. Participation Requirements.

Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

R986-600-620. Participation in Obtaining an Assessment.

(1) When the Department or youth contract provider determines that a client has a need for intensive services, an employment counselor/case worker will be assigned to assess the needs of the client.

(2) The assessment evaluation is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-600-621. Requirements of an Employment Plan.

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of employment.

(5) The employment plan may require that the client:

(a) search for employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the state Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

R986-600-622. Requirements of an Employment Plan for Youth.

(1) The focus of services for youth is for youth aged 14 to 21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The goal of employment for youth is:

(a) placement in employment or postsecondary education;

(b) attainment of a degree or certificate; or

(c) literacy and numeracy gains for out-of-school youth who are basic skill deficient.

R986-600-623. Education and Training and Support Services as Part of an Employment Plan.

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to achieve self-sufficiency;

(b) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(c) the client is willing to complete the education or training as quickly as is reasonable;

(d) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

(e) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) Additional payments and/or services are allowable under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to

participate in activities authorized under this title (WIA).

R986-600-624. The Right to Appeal a Denial of Services.

If an applicant or a client who is currently receiving services is denied services the individual can request a hearing as provided in Rules R986-100-123 through R986-100-135. If the client is currently receiving services under WIA and requests a hearing within 10 days of the denial, services will continue pending the hearing as provided in Rule R986-100-134.

R986-600-651. Definitions.

(1) "State Council" means the State Council on Workforce Services.

(2) "Eligible Provider" means a occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the State Council.

(3) "Regional Council" means any of the Regional Councils on Workforce Services.

R986-600-652. Determining Eligibility for Training Providers.

(1) Training providers are automatically eligible if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) all names under which the provider operates or is known, the mailing address, physical address, telephone number, and email address (if available) of the training facility and the number of years the provider has been in business;

(b) a copy of the provider's student grievance procedure;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the provider must provide to the Department:

(i) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(ii) the name of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(iii) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity identified in subparagraph (2)(g)(ii) of this section; and

(iv) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency identified in subparagraph (2)(g)(ii) of this section, or have earned the accreditation and/or certification from the appropriate entity from subparagraph (2)(g)(ii) of this section to teach and/or practice in the field for which the students are being prepared;

(h) program costs including tuition and fees; and

(i) documentation showing the provider has registered with the Utah Division of Consumer Protection, if required by UCA Title 13 Chapter 34. Governmental agencies are exempt and do not need to provide additional documentation but all other providers which are exempt from registration with the Utah Division of Consumer Protection must also submit the following;

(i) documentation of exempt status with the Utah Division of Consumer Protection;

(ii) the self-administered Department facilities accessibility checklist; and

(iii) documentation of financial stability prepared by a Certified Public Accountant.

(j) any other information, documentation or verification requested by the Department.

(3) Applications from providers covered under subsection 2 of this section must be sent to the Department. The Department will forward the application to the Regional Council in the region in which the provider does business. The Regional Council recommendation to the State Council that the application be approved or denied. The State Council takes the final action on each application.

(4) All providers must be in business for a minimum of one year before applying to become a training provider.

(5) The Department will notify a provider in writing when a final decision has been made concerning the provider's eligibility.

(6) A list of eligible providers, including the provider's program performance, if available, and cost information will be published on the Department's Internet site.

(7) Once a provider has been approved, the Department may establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review, if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(8) Providers must retain participant program records for three years from the date the participant completes the program.

(9) A provider who is not on the Department's approved provider list is not eligible for receipt of WIA funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department;

(b) has committed fraud or violated applicable state or federal law;

(c) intentionally supplies inaccurate student or program performance information; or

(d) fails to complete the review process.

(10) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations;

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department; or

(iv) a provider removed for supplying inaccurate student or program performance information will be suspended for two years.

R986-600-653. Distance Learning Providers.

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

(a) leads to the completion of a training program;

(b) requires students to interact with instructors;

(c) requires students to take periodic tests.

R986-600-655. The Right to a Hearing and How to Request a Hearing.

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) If the Council made the decision being appealed, the hearing request must be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's eligibility will be final.

(3) If the Department made the determination to deny eligibility or to remove the provider, the written hearing request must be made to the Department and a hearing will be held in accordance with rule R986-100-124 through R986-100-132. Any appeal of the decision of the ALJ must be made to the Council. The Council's decision will be final.

R986-600-656. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.

(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.

(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

R986-600-657. Noncompliance.

(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will;

(a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;

(b) establish a corrective action plan;

(c) notify the provider of the time lines for the completion of the plan; and

(d) ensure compliance with the corrective action plan.

(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

R986-600-658. Sanctions for Noncompliance and Right to Appeal.

(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination laws or required corrective actions.

(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to;

(a) discontinue referral of participants to the provider,

(b) cancel the contract with the provider,

(c) make other changes deemed necessary to secure compliance, and/or

(d) refer the matter to another governmental entity.

(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.

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R994. Workforce Services, Unemployment Insurance.
R994-403. Claim for Benefits.
R994-403-101a. Filing a New Claim.

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday immediately preceding the date the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) Before payment can be made on a subsequent claim using those unused wages, each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify;

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower;

(d) the claimant must have actually received benefits during the preceding benefit year; and

(e) benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops

designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the week the claimant failed to comply and ends with the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within a reasonable amount of time.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause for nonparticipation is established if the claimant can show:

(a) completion of equivalent services within the 12 month period immediately preceding the date the claimant is scheduled for reemployment services; or

(b) that the failure to participate was reasonable or beyond the claimant's control.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(5).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the

claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country. An exception to this general rule is that a claimant who travels to a foreign country for the express purpose of applying for employment and is out of the United States for two consecutive weeks or less is eligible for those weeks provided the claimant can prove he or she has a legal right to work in that country. A claimant who is out of the United States for more than two weeks is not eligible for benefits for any of the weeks.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Wage Restrictions.

(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.

(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.

(i) After a claimant has received1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.

(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.

(c) Exception for Deferred Claimants.

The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.

(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.

(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or

private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(9) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(10) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(11) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

A claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work is generally interpreted to mean that each week a claimant should contact a minimum of two employers not previously contacted unless the claimant is otherwise directed by the Department. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. Failure of a claimant to make at least the minimum number of contacts creates a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he or she has pursued a job development plan likely to result in employment. A claimant's job development activities for a specific week should be considered in relation to the claimant's overall work search efforts and the length of the claimant's unemployment. Creating a job development plan and/or writing resumes may be reasonable and acceptable activities during the first few weeks of a claim, but may be insufficient after the claimant has been unemployed for several weeks.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort is not necessarily established simply by making a specific number of contacts to satisfy the Department requirement.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b).

(b) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work:

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility; and

(4) must keep a detailed record of the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks.

(3) The claimant will be disqualified for all weeks in

which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. This includes requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by Department employees.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. A claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer fails to provide information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause, as it applies to this section of the rule, may be established if the claimant or employer:

(1) made reasonable attempts to provide the information within the time frame requested, or

(2) was prevented from complying due to circumstances which were compelling or beyond their control.

R994-403-123. Obligation of Department Employees.

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

(1) If Department approval is granted, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved. Benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section,

if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

KEY: filing deadlines, registration, student eligibility, unemployment compensation
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