

**R23. Administrative Services, Facilities Construction and Management.****R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.****R23-23-1. Purpose.**

The purpose of this rule is to comply with the provisions of Section 63A-5-205.

**R23-23-2. Authority.**

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

**R23-23-3. Definitions.**

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-205.

(2) In addition:

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Employee(s)" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(e) "State" means the State of Utah.

**R23-23-4. Applicability of Rule.**

(1) Except as provided in Subsection R23-23-4(2) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board on or after July 1, 2009, and

(a) applies to a prime contractor if the prime contract is in the amount of \$1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract is in the amount of \$750,000 or greater.

(2) This Rule R23-23 does not apply if:

(a) the application of this Rule R23-23 jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R23-23-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

**R23-23-5. Contractor to Comply with Section 63A-5-205.**

All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

**R23-23-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.**

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this rule or Section 63A-5-205:

(a) may not be the basis for a protest or other action from

a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

**R23-23-7. Requirements and Procedures a Contractor Must Follow.**

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor (including consultants, designers and others under contract with the Division) that is subject to the requirements of this Rule no later than the time the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the Director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents; and

(b) The contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors (including subconsultants) at any tier that is subject to the requirements of this Rule.

(2) Recertification. The Director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection 63A-5-205(1)(e) and defined in Section 26-40-115 is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department; an actuary selected by the contractor or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this Rule R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding the requirements of Section 26-40-115 which are also delineated on the DFCM website at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>.

(4) The health insurance must be available upon the first day of the calendar month following ninety (90) days from the date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this rule shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R23-23-7(8)(c)(i) as provided in Subsection 63A-5-205(3)(g)(ii).

**R23-23-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.**

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.

**KEY: health insurance, contractors, contracts, contract requirements**  
July 11, 2011

63A-5-103(1)(e)  
63A-5-205

**R23. Administrative Services, Facilities Construction and Management.****R23-31. Executive Residence Commission.****R23-31-1. Purpose.**

The purpose of this rule is to comply with S.B. 203 of the 2011 General Session of the Utah Legislature which amends the provisions of Section 67-1-8.1.

**R23-31-2. Authority and Applicability.**

This rule is authorized under Section 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management. This is a new rule to implement S.B. 203 of the 2011 General Session of the Utah Legislature which amends Section 67-1-8.1.

**R23-31-3. Definitions.**

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 67-1-8.1.

(2) In addition:

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Commission" means the Executive Residence Commission established pursuant to Section 67-1-8.1.

(c) "Executive Residence" includes the:

(i) Thomas Kearns Mansion;

(ii) Carriage House building; and

(iii) Grounds and landscaping surrounding the Thomas Kearns Mansion and the Carriage House building.

(d) "Preservation Zones" are those zones described in Rule 23-31-6.

**R23-31-4. Preservation Zones of the Governor's Mansion.**

(1) Preservation Zone One: The following applies to Preservation Zone One:

(a) Zone One contains very important character defining features, consisting of all floor, wall and ceiling finishes. All decorative elements and furnishings existing as of May 10, 2011 have been carefully researched and selected to reflect the historic significance of the Executive Residence. Zone One is described in Rule R23-31-6.

(b) Any changes to the decorative elements and furnishings in Zone One will need the review and recommendation of the Commission to the Board. Approval may be given by the State Building Board after considering input from the Commission and the State Historic Preservation Officer.

(c) There must be compelling reasons presented to the Board for changes to the decorative elements and furnishings in Zone One.

(d) Notwithstanding the above, and provided that the Zone One characteristics are not affected, it is recognized that the Residence acts as the temporary home of the First Family. Placement of personal art and memorabilia is encouraged throughout the Residence to personalize the spaces and allow the Residence to provide a home life for the Governor and the Governor's family. The placement of said personal art and memorabilia shall be carefully considered to ensure that character defining features are preserved.

(2) Preservation Zone Two. The following applies to Preservation Zone Two:

(a) The area described in Rule R23-31-6 as Zone Two has been previously altered, but contains some Zone One character defining features, which features shall be considered part of Zone One. Examples of such features are: ceiling plasterwork, woodwork, certain wall locations, fireplaces, windows and window surrounds, original flooring, light fixtures and other character defining features.

(b) Temporary furnishings may be altered without going

through the Commission; but the Commission shall be made aware of any such alteration request in writing.

(c) Any changes to Zone Two may be done without any review or approval by the Commission or the Board.

**R23-31-5. Specific Descriptions of the Preservation Zones for Purposes of this Rule.**

The following provides the specific descriptions of the Preservation Zones for purposes of this Rule R23-31:

(1) Mansion Exterior:

(a) All exterior surfaces are considered Preservation Zone One.

(2) Mansion Floor One (Main Level):

(a) All areas on the main level are considered Preservation Zone One.

(3) Mansion Floor Two:

(a) Main stairs and north stair and well area are considered Preservation Zone One.

(b) The private residence area on level two is considered Preservation Zone Two with the following exceptions which are considered Preservation Zone One:

(i) Private Quarters Entry Hall

(A) Permanent fixtures

(B) Wall treatments

(C) Wall sconces

(D) Flooring

(ii) Den/Living Room

(A) Birdseye maple

(B) Flooring

(C) Fireplace

(D) Plasterwork

(E) Woodwork

(iii) Dining Room/TV Area

(A) Plaster work

(B) Fireplace

(C) Woodwork

(D) Flooring

(iv) All Bedrooms

(A) Fireplaces where applicable

(B) Permanent fixtures

(C) Wall treatments

(D) Wall sconces

(E) Flooring

(4) Mansion Floor Three

(a) All areas on level three are considered Preservation Zone One with the following exceptions which are Preservation Zone Two:

(i) Serving kitchen, pantry and hallway to restrooms

(ii) Private bedroom on level three is considered Preservation Zone Two with the following exceptions which are Preservation Zone One:

(A) Permanent fixtures

(B) Wall treatments

(C) Wall sconces

(D) Flooring

(E) Decorative plaster

(F) Woodwork

(5) Mansion Basement Level

(a) All areas on basement level are considered Preservation Zone Two with the following exceptions which are Preservation Zone One:

(i) All wood doors and historic wood partition

(ii) Windows and window surrounds

(6) Carriage House Exterior

(a) All exterior surfaces are considered Preservation Zone One

(7) Carriage House Interior

(a) All interior areas are considered Preservation Zone One with the following exceptions which are Preservation Zone

Two:

- (i) Executive Security control room and office area

**R23-31-6. Provisions of Section 67-1-8.1 Shall Govern.**

All provisions of the Section 67-1-8.1, whether or not referred to in this rule, shall govern the Commission and all other agencies, entities and persons as provided for in Section 67-1-8.1.

**R23-31-7. Report to the Building Board.**

DFCM shall report to the Board about the Commission as needed.

**KEY: Governor's Mansion, Executive Residence  
Commission, preservation**

**July 11, 2011**

**63A-5-103(1)(e)**

**67-1-8.1(3)**

**67-1-8.1(8)**

**R27. Administrative Services, Fleet Operations.****R27-3. Vehicle Use Standards.****R27-3-1. Authority and Purpose.**

(1) This rule is established pursuant to Section 63A-9-401(1)(d), which authorizes the Division of Fleet Operations (DFO) to establish the requirements for the use of state vehicles, including business and personal use practices, and commute standards.

(2) This rule defines the vehicle use standards for state employees while operating a state vehicle.

**R27-3-2. Agency Contact.**

(1) Each agency, as defined in Subsection 63A-9-101, shall appoint and designate, in writing, a main contact person from within the agency to act as a liaison between the Division of Fleet Operations and the agency.

**R27-3-3. Agency Authorization of Drivers.**

(1) Agencies authorized to enter information into DFO's fleet information system shall, for each employee, as defined in section 63G-7-102(2), Utah Governmental Immunity Act, to whom the agency has granted the authority to operate a state vehicle, directly enter into DFO's fleet information system, the following information:

- (a) Driver's name;
- (b) Driver license number;
- (c) State that issued the driver license;
- (d) Each Risk Management-approved driver training program(s) taken;
- (e) Date each driver safety program(s) was completed;
- (f) The type vehicle that each safety program is geared towards.

(2) Agencies without authorization to enter information into DFO's fleet information system shall provide the information required in paragraph 1 to DFO for entry into DFO's fleet information system.

(3) For the purposes of this rule, any employee, as defined in section 63G-7-102(2), whose fleet information system record does not have all the information required in paragraph 1 shall be deemed not to have the authority to drive state vehicles and shall not be allowed to drive either a monthly or a daily lease vehicle.

(4) To operate a state vehicle, employees, as defined in section 63G-7-102(2), whose names have been entered into DFO's fleet information system as authorized drivers shall have:

- (a) a valid driver license for the type and class of vehicle being operated;
- (b) completed the driver safety course required by DFO and the Division of Risk Management for the type or class of vehicle being operated; and
- (c) met the age restrictions imposed by DFO and the Division of Risk Management for the type or class of vehicle being operated.

(5) Agencies shall develop and establish procedures to ensure that any individual listed as an authorized driver is not allowed to operate a state vehicle when the individual:

- (a) does not have a valid driver license for the type or class of vehicle being operated; or
- (b) has not completed all training and/or safety programs required by either DFO or the Division of Risk Management for the type or class of vehicle being operated; or
- (c) does not meet the age restrictions imposed by either DFO or the Division of Risk Management for the type or class of vehicle being operated.

(6) A driver license verification check shall be conducted on a regular basis in order to verify the status of the driver license of each employee, as defined in section 63G-7-102(2), whose name appears in the DFO fleet information system as an authorized driver.

(7) In the event that an authorized driver is found not to have a valid driver license, the agency shall be notified, in writing, of the results of the driver license verification check.

(8) Any individual who has been found not to have a valid driver license shall have his or her authority to operate a state vehicle immediately withdrawn.

(9) Any employee, as defined in section 63G-7-102(2), who has been found not to have a valid driver license shall not have the authority to operate a state vehicle reinstated until such time as the individual provides proof that his or her driver license is once again valid.

(10) Authorized drivers shall operate a state vehicle in accordance with the restrictions or limitations imposed upon their respective driver license.

(11) Agencies shall comply with the requirements set forth in Risk Management General Rules, R37-1-8 (3) to R37-1-8 (9).

**R27-3-4. Authorized and Unauthorized Use of State Vehicles.**

(1) State vehicles shall only be used for official state business.

(2) Except in cases where it is customary to travel out of state in order to perform an employee's regular employment duties and responsibilities, the use of a state vehicle outside the State of Utah shall require the approval of the director of the department that employs the individual.

(3) The use of a state vehicle for travel outside the continental U.S. shall require the approval of the director of the employing department, the director of DFO, and the director of the Division of Risk Management. All approvals must be obtained at least 30 days prior to the departure date. The employing agency shall, prior to the departure date, provide DFO and the Division of Risk Management with proof that proper automotive insurance has been obtained. The employing agency shall be responsible for any damage to vehicles operated outside the United States regardless of fault.

(4) Unless otherwise authorized, the following are examples of the unauthorized use of a state vehicle:

- (a) Transporting family, friends, pets, associates or other persons who are not state employees or are not serving the interests of the state.
- (b) Transporting hitchhikers.
- (c) Transporting acids, explosives, hazardous materials, flammable materials, and weapons and ammunition (except as authorized by federal and/or state laws). Otherwise, the transport of the above-referenced items or materials is deemed authorized when it is specifically related to employment duties.

(d) Extending the length of time that the state vehicle is in the operator's possession beyond the time needed to complete the official purposes of the trip.

(e) Operating or being in actual physical control of a state vehicle in violation of Subsection 41-6a-502, (Driving under the influence of alcohol, drugs or with specified or unsafe blood alcohol concentration), Subsection 53-3-231, (Person under 21 may not operate a vehicle with detectable alcohol in body), or an ordinance that complies with the requirements of Subsection 41-6a-510, (Local DUI and related ordinances and reckless driving ordinances).

(f) Operating a state vehicle for personal use as defined in R27-1-2(36). Generally, except for approved personal uses set forth in R27-3-5 and when necessary for the performance of employment duties, the use of a state vehicle for activities such as shopping, participating in sporting events, hunting, fishing, or any activity that is not included in the employee's job description, is not authorized.

(g) Using a state vehicle for personal convenience, such as when a personal vehicle is not operational.

(h) Pursuant to the provisions of R27-7-1 et seq., the unauthorized use of a state vehicle may result in the suspension

or revocation of state driving privileges.

#### **R27-3-5. Personal Use Standards.**

(1) Personal use of state vehicles is not allowed without the direct authorization of the Legislature. The following are circumstances where personal use of state vehicles are approved:

(a) Elected and appointed officials that receive a state vehicle as a part of their respective compensation package, and have been granted personal use privileges by state statute.

(b) Sworn law enforcement officers, as defined in Utah Code 53-13-103, whose agencies have received funding from the legislature for personal use of state vehicles.

(c) In an emergency, a state vehicle may be used as necessary to safeguard the life, health or safety of the driver or passenger.

(2) An employee or representative of the state spending at least one night on approved travel to conduct state business, may use a state vehicle in the general vicinity of the overnight lodging for the following approved activities:

(a) Travel to restaurants and stores for meals, breaks and personal needs;

(b) Travel to grooming, medical, fitness or laundry facilities; and

(c) Travel to and from recreational activities, such as to theaters, parks, or to the home of friends or relatives, provided said employee or representative has received approval for such travel from his or her supervisor.

(d) Pursuant to the provisions of R27-7-1 et seq., the unauthorized personal use of a state vehicle may result in the suspension or revocation of state driving privileges.

#### **R27-3-6. Application for Commute or Take Home Use.**

(1) Each petitioning agency shall, for each driver being given commute or take home privileges, annually complete and submit an online take home form from the DFO website. Submitted take home information will generate a new form that must be signed by the employee, direct supervisor of the employee, and the executive director of the agency.

(2) DFO shall enter the approved commute or take home request into the fleet information system and provide an identification number to both the driver and the agency.

(3) All approvals for commute or take home privileges shall expire at the end of the calendar year on which they were issued and DFO shall notify the agency of said expiration. Agencies shall be responsible for submitting any request for annual renewal of commute or take home use privileges.

(4) Commute use is, unless specifically exempted under R27-3-8, infra, considered a taxable fringe benefit as outlined in IRS publication 15-B. All approved commute use drivers will be assessed the IRS imputed daily fringe benefit rate while using a state vehicle for commute use.

(5) For each individual with commute use privileges, the employing agency shall, pursuant to Division of Finance Policy FIACCT 10-01.00, prepare an Employee Reimbursement/Earnings Request Form and enter the amount of the commute fringe benefit into the payroll system on a monthly basis.

#### **R27-3-7. Criteria for Commute or Take Home Privilege Approval.**

(1) Commute or Take Home use may be approved when one or more of the following conditions exist:

(a) 24-hour "On-Call." Where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute or take home privilege is not authorized, could endanger a human life or cause significant property damage. Each driver is required to keep a complete list of all call-outs for renewal of the take home privilege the following year. Agencies may use DFO's online

forms to track take home mileage.

(b) Virtual office. Where an agency clearly demonstrates that an employee is required to work at home or out of a vehicle, a minimum of 80 percent of the time and the assigned vehicle is required to perform critical duties in a manner that is clearly in the best interest of the state.

(c) When the agency clearly demonstrates that it is more practical for the employee to go directly to an alternate work-site rather than report to a specific office to pick-up a state vehicle.

(d) When a vehicle is provided to appointed or elected government officials who are specifically allowed by law to have an assigned vehicle as part of their compensation package.

(2) The trip log must be created for the first and last trip of the day for all take-home vehicles.

#### **R27-3-8. Exemptions from IRS Imputed Daily Fringe Benefits.**

(1) In accordance with IRS publication 15-b, employees with an individual permanently assigned vehicle are exempt from the imputed daily fringe benefit for commute use when the permanently assigned vehicles are either:

(a) Clearly marked police and fire vehicles;

(b) Unmarked vehicles used by law enforcement officers if the use is specifically authorized;

(c) An ambulance or hearse used for its specific purpose;

(d) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 lbs;

(e) Delivery trucks with seating for the driver only, or the driver plus a folding jump seat;

(f) A passenger bus with the capacity of at least 20 passengers used for its specific purpose;

(g) School buses;

(h) Tractors and other special purpose farm vehicles;

(i) A pick up truck with a loaded gross vehicle weight of 14,000 lbs or less, if it has been modified so it is not likely to be used more than minimally for personal purposes.

Example: According to the IRS, a pick up truck qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business or function and meets either of the following requirements:

(i) It is equipped with at least one of the following items:

(a) A hydraulic lift gate;

(b) Permanent tanks or drums;

(c) Permanent sideboards or panels that materially raise the level of the sides of the truck bed;

(d) Other heavy equipment (such as an electronic generator, welder, boom or crane used to tow automobiles or other vehicles).

(ii) It is used primarily to transfer a particular type of load (other than over public highways) in a construction, manufacturing processing, farming, mining, drilling, timbering or other similar operation for which it is specifically modified.

(j) A van with a loaded gross vehicle weight of 14,000 lbs or less, if it has been specifically modified so it is not likely to be used more than minimally for personal purposes.

Example: According to the IRS, a van qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting or other advertising associated with your trade, business and has a seat for the driver only (or the driver and one other person) and either of the following items:

(i) permanent shelving that fills most of the cargo area; or

(ii) An open cargo area and the van always carries merchandise, material or equipment used in your trade, business or function.

(2) Questions relating to the imputed daily taxable fringe benefit for the use of a state vehicle and exemptions thereto should be directed to DFO.

**R27-3-9. Enforcement of Commute Use Standards.**

(1) Agencies with drivers who have been granted commute or take home privileges shall establish internal policies to enforce the commute use, take home use and personal use standards established in this rule. Agencies shall not adopt policies that are less stringent than the standards established in these rules.

(2) Commute or take home use that is unauthorized shall result in the suspension or revocation of the commute use privilege by the agency. Additional instances of unauthorized commute or take home use may result in the suspension or revocation of the state driving privilege by the agency.

**R27-3-10. Use Requirements for Monthly Lease Vehicles.**

(1) Agencies that have requested, and received monthly lease options on state vehicles shall:

(a) Ensure that only authorized drivers whose names and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated, shall operate monthly lease vehicles.

(b) Report the correct odometer reading when refueling the vehicle. In the event that an incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(c) Return the vehicle in good repair and in clean condition at the completion of the replacement cycle period or when the vehicle has met the applicable mileage criterion for replacement, reassignment or reallocation.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(d) Return the vehicle unaltered and in conformance with the manufacturer's specifications.

(e) Pay the applicable insurance deductible in the event that monthly lease vehicle in its possession or control is involved in an accident.

(f) Not place advertising or bumper stickers on state vehicles without prior approval of DFO.

(2) The provisions of Rule R27-4 shall govern agencies when requesting a monthly lease.

(3) Under no circumstances shall the total number of occupants in a monthly lease full-size passenger van exceed ten (10) individuals, the maximum number recommended by the Division of Risk Management.

**R27-3-11. Use Requirements for Daily Motor Pool Vehicles.**

(1) DFO offers state vehicles for use on a daily basis at an approved daily rental rate. Drivers of a state vehicle offered through the daily pool shall:

(a) Be an authorized driver whose name and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated. In the event that any of the information required by R27-3-3(1) has not been entered in DFO's fleet information system, the rental vehicle will not be released.

(b) Read the handouts, provided by DFO, containing information regarding the safe and proper operation of the vehicle being leased.

(c) Verify the condition of, and acknowledge responsibility

for the care of, the vehicle prior to rental by filling out the daily motor pool rental form provided by daily rental personnel.

(d) Report the correct odometer reading when refueling the vehicle at authorized refueling sites, and when the vehicle is returned. In the event that incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was a blatant disregard of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(e) Return vehicles with a full tank of fuel. Agencies shall be assessed a fee for vehicles that are returned with less than a full tank of fuel.

(f) Return rental vehicles in good repair and in clean condition.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(g) Call to extend the reservation in the event that they need to keep rental vehicles longer than scheduled. Agencies shall be assessed a late fee, in addition to applicable daily rental fees, for vehicles that are not returned on time.

(h) Use their best efforts to return rented vehicles during regular office hours. Agencies may be assessed a late fee equal to one day's rental for vehicles that are not returned on time.

(i) Call the daily pool location, at least one hour before the scheduled pick-up time, to cancel the reservation. Agencies shall be assessed a fee for any unused reservation that has not been canceled.

(j) Not place advertising or bumper stickers on state vehicles without prior approval from DFO.

(2) The vehicle shall be inspected upon its return. The agency shall either be held responsible for any damages not acknowledged prior to rental, or any applicable insurance deductibles associated with any repairs to the vehicle.

(3) Agencies are responsible for paying all applicable insurance deductibles whenever a vehicle operated by an authorized driver is involved in an accident.

(4) The DFO shall hold items left in daily rental vehicles for ten days. Items not retrieved within the ten-day period shall be turned over to the Surplus Property Office for sale or disposal.

**R27-3-12. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria.**

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need.

(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted with written approval from an employee's supervisor.

(b) Requests for a seven-passenger van may be granted in the event that the driver is going to be transporting more than three authorized passengers.

(c) Requests for full-size passenger vans may be granted in the event that the driver is going to be transporting more than six authorized passengers. Under no circumstances shall the total number of occupants exceed the maximum number of passengers recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only. Passengers shall not be transported in cargo area of said

vehicles.

(4) Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel or dual-fuel state vehicle. Drivers shall, when practicable, use an alternative fuel when driving a bi-fuel or dual-fuel state vehicle.

**R27-3-13. Alcohol and Drugs.**

(1) No authorized driver shall operate or be in actual physical control of a State vehicle in violation of subsection 41-6a-502, any ordinance that complies with the requirements of subsection 41-6a-510, or subsection 53-3-231.

(2) Any individual on the list of authorized drivers who is convicted of Driving Under the Influence of alcohol or drugs(DUI), Reckless Driving or any felony in which a motor vehicle is used, either on-duty or off-duty, may have his or her state driving privileges withdrawn, suspended or revoked.

(3) No operator of a state vehicle shall transport alcohol or illegal drugs of any type in a State vehicle unless they are:

(a) Sworn peace officers, as defined in Section 53-13-102, in the process of investigating criminal activities;

(b) Employees of the Alcohol Beverage Control Commission conducting business within the guidelines of their daily operations; or

(c) investigators for the Department of Commerce in the process of enforcing the provisions of section 58-37, Utah Controlled Substances Act.

(4) Except as provided in paragraph 3, above, any individual who uses a state vehicle for the transportation of alcohol or drugs may have his or her state driving privileges withdrawn, suspended or revoked.

**R27-3-14. Violations of Motor Vehicle Laws.**

(1) Authorized drivers shall obey all motor vehicle laws while operating a state vehicle.

(2) Any authorized driver who, while operating a state vehicle, receives a citation for violating a motor vehicle law shall immediately report the receipt of the citation to their respective supervisor. Failure to report the receipt of a citation may result in the withdrawal, suspension or revocation of State driving privileges.

(3) Any driver who receives a citation for violating a motor vehicle law while operating a state vehicle shall attend an additional Risk Management-approved mandatory defensive driver training program. The failure to attend the additional mandatory defensive driver training program shall result in the loss of state driving privileges.

(4) Any driver who receives a citation for a violation of motor vehicle laws, shall be personally responsible for paying fines associated with any and all citations. The failure to pay fines associated with citations for the violation of motor vehicle laws may result in the loss of state driving privileges.

**R27-3-15. Seat Restraint Use.**

(1) All operators and passengers in State vehicles shall wear seat belt restraints while in a moving vehicle.

(2) All children being transported in State vehicles shall be placed in proper safety restraints for their age and size as stated in Subsection 41-6a-1803.

**R27-3-16. Driver Training.**

(1) Any individual shall, prior to the use of a state vehicle, complete all training required by DFO or the Division of Risk Management, including, but not limited to, the defensive driver training program offered through the Division of Risk Management.

(2) Each agency shall coordinate with the Division of Risk Management, specialty training for vehicles known to possess unique safety concerns.

(3) Each agency shall require that all employees who

operate a state vehicle, or their own vehicles, on state business as an essential function of the job, or all other employees who operate vehicles as part of the performance of state business, comply with the requirements of Division of Risk Management rule R37-1-8(5).

(4) Agencies shall maintain a list of all employees who have completed the training courses required by DFO, Division of Risk Management and their respective agency.

(5) Employees operating state vehicles must have the correct license required for the vehicle they are operating and any special endorsements required in order to operate specialty vehicles.

**R27-3-17. Smoking in State Vehicles.**

(1) All state vehicles are designated as "nonsmoking". Agencies shall be assessed fees for any damage incurred as a result of smoking in vehicles.

**KEY: state vehicle use**

**July 12, 2011**

**63A-9-401(1)(d)**

**Notice of Continuation November 29, 2010**



**R137. Career Service Review Office, 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 63G-4-103 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(3)(b).

"Administrator" means the incumbent in the position defined at Subsection 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"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.

"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.

CSRO means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-406.

"Closing Argument" 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 may be 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.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, petition, or other paper to the CSRO 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 CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-406 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 4 level.

"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 or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRO administrator and assigned to decide a particular grievance case at the evidentiary/step 4 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.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance issue to the evidentiary/step 4 level.

"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 63G-4-401, 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.

"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.

"Motion to Dismiss" means a motion requesting that a

grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"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.

"Presiding Hearing Officer" means either the Administrator or designated evidentiary/step 4 hearing officer.

"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 grievance was appealed.

"Standard of Proof" means the evidentiary standard, which in CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"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 reasonably 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 hearing officer 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 63G-4-102 through 63G-4-601.

"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 78B-1-119.

"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 Fridays, Saturdays, Sundays and recognized State holidays.

#### **R137-1-3. Classification Jurisdiction.**

The CSRO and the CSRO 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 R477-3-5.

#### **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 CSRO and CSRO 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 CSRO 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 Career Service Review 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 or by the designated CSRO hearing officer.

(a) All filing dates are based upon the CSRO'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 63G-4-205(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, documents 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 CSRO hearing officer.

(b) A person receiving a subpoena issued by the CSRO 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 five 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 CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution 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 and Distribution 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 CSRO decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRO 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 or by a CSRO hearing officer are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The CSRO will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRO 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 and Distribution 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. Hearing Dates, Continuance/Extension of Time.**

(1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, the administrator shall set a date for the evidentiary/step 4 hearing that is:

- (a) within 30 days of the administrator's determination; or
- (b) if agreed to by the parties, no more than 150 days from the administrator's determination date.

(2) Notwithstanding Subsection (1), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.

(a) Every petition for a continuance shall specify the reason for the requested delay.

(b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:

- (i) whether the request was timely made in writing; and
- (ii) whether the request is based on extraordinary circumstances.

(3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

#### **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 CSRO 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)(a)(i), and Sections 63G-4-402 and 63G-4-403 of the UAPA.

(3) Class Action. Pursuant to Subsection 67-19a-401(8), class action grievances will not be admissible for consideration by the CSRO 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(8)(a) and (b).

**R137-1-11. Issues Appealable to the Evidentiary/Step 4 Level.**

(1) All grievances shall be reviewed to determine: Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsection 67-19a-202(1)(a), or

(2) Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

**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 or extend steps 1, 2, or 3 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be in writing and submitted to the administrator.

(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 1, 2 or 3 may be waived, but not step 4. Any waiver agreed to between the parties must be in writing, dated and submitted to the administrator according to Subsection 67-19a-401(2) and (3).

(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 CSRO hearing officer shall determine the applicability of the excusable neglect standard when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer 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 63G-4-209 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 or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

**R137-1-14. Grievance Procedure Steps.**

Persons acting on grievances pursuant to Section 67-19a-402, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

Step 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance then becomes a formal complaint necessitating a response. Steps 2 and 3 also necessitate responses within time periods outlined in Section 67-19a-402. Such responses are to be issued by only one supervisor, director, etc. at each step.

Step 2; If the grievance is not resolved at step 1, the employee may advance their grievance to step 2. Step 2 requires the grievance be reviewed by the agency or division director or designee;

Step 3; If the grievance is not resolved at step 2, the employee may advance their grievance to step 3. Step 3 requires the grievance be reviewed by the department head, executive director, commissioner or their designated representative.

Step 4; If the grievance is not resolved at step 3, the employee may advance their grievance to step 4. Step 4 is an evidentiary de novo hearing conducted before a CSRO hearing officer.

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 Appealing Disciplinary Action Imposed by Department Head.**

(1) An aggrieved employee who has been suspended without pay, demoted or dismissed by their respective department head (i.e., executive director or commissioner) may appeal the department head's action directly to the CSRO at the evidentiary step 4 level.

(a) An appeal from discipline imposed by the department head is distinguishable from a grievance.

(b) A grievance is filed at step 1 and proceeds through steps 2 and 3. Suspensions without pay that are not imposed by a department head shall proceed through the grievance procedures as a grievance.

(c) When an appeal from discipline imposed by a department head occurs at the step 3 level, it may be appealed directly to the CSRO at the evidentiary/step 4 level.

(2) When appealed to the CSRO, 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 Appealing Reduction in Force or Abandonment of Position.**

An aggrieved employee may appeal a reduction in force or abandonment of position 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 of receipt of the decision with the CSRO.

(2) An employee separated from employment for abandonment of position may appeal the department head's final written decision by filing a written appeal with the CSRO within 20 working days of receipt of the decision.

#### **R137-1-17. Initial Review by Administrator.**

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsection 67-19a-403(2) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsection 67-19a-403(2) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, 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 has authority to determine which types of grievances may be heard at the evidentiary/step 4 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 4 level are precluded from further consideration in any grievance submitted for CSRO consideration.

(3) Preclusion. Those types of actions not listed in Subsection 67-19a-202(1)(a) and referenced in Subsection 67-19a-302(1) are precluded from advancement to the evidentiary/step 4 level. When the grievance is precluded from the evidentiary/step 4 level, the matter under dispute shall be deemed as final at the level of the department head/step 3 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 the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 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 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 initial adjudicative hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 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 63G-4-402 and 63G-4-404 of the UAPA which are incorporated by reference.

(6) Summary Judgment. The administrator or the presiding hearing officer 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 3; or
- (g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals the administrator's initial adjudicative 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 CSRO 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 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

#### **R137-1-18. Procedural Matters.**

The provisions under this section pertain to initial administrative and evidentiary/step 4 proceedings before the CSRO.

(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 CSRO administrator or the CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRO administrator or the CSRO 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 63G-4-202 of the UAPA:

(a) All initial administrative and evidentiary/step 4 adjudications at the CSRO are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 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) is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 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 these 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 presiding CSRO 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 argument. The moving party may offer one rebuttal. Continuously rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the presiding CSRO hearing officer shall note the objection for the record. A ruling is then made by the presiding CSRO hearing officer, or the objection may be taken under advisement to be ruled upon later.

(b) The presiding CSRO 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 administrator or CSRO hearing officer may, upon a party's motion or upon their own motion, dismiss the grievance or appeal before the CSRO.

(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 CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsection 67-19a-406(2).

(11) Hearsay Evidence. Hearsay evidence is admissible in CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Section 63G-4-205 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 CSRO hearing officer, parties to a dispute may obtain discovery. The CSRO hearing officer has discretion to entertain motions to conduct discovery on a case-by-case basis regarding the following:

(i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and

(ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.

(c) No other form of discovery is permitted.

(d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the presiding CSRO 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 CSRO 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 CSRO for the granting of any exceptions to the page limitation provision.

(c) The CSRO 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 CSRO 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 subpoenaed 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 CSRO 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 CSRO 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 78B-1-119. The CSRO 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 presiding CSRO 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 presiding CSRO 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 presiding CSRO 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 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 CSRO 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 or the CSRO hearing officer may close either a portion or an entire hearing based upon reasonable grounds.

(b) An evidentiary/step 4 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 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator or the CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c).

(3) Media Presence. All hearings at the jurisdictional and evidentiary/step 4 level are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras

are not permitted at the evidentiary/step 4 proceeding.

(4) Distribution of Decisions. Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, 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 the Open and Public Meetings statute.

#### **R137-1-21. The Evidentiary/Step 4 Adjudicatory Procedures.**

(1) Authority of the CSRO Hearing Officer/Presiding Officer. The CSRO hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at evidentiary/step 4 hearings as set forth at Subsection 63G-4-103(1)(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 any motions, discovery requests, 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 4 Hearing. An evidentiary/step 4 hearing shall be a hearing on 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 CSRO 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 CSRO hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary/step 4 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 CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary/step 4 factual findings support the allegations of the agency or the appointing authority, then the CSRO 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 CSRO hearing officer shall give deference to the decision of the agency or the appointing authority. If the CSRO hearing officer determines that the agency's penalty is excessive, disproportionate or constitutes an abuse of discretion, the CSRO hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The CSRO hearing officer shall note appearances for the record and note the party having the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRO 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 CSRO 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 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 CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step 4 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step 4 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 CSRO hearing officer. Enforcement measures available to the CSRO 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 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step 4 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 4 decision. The same CSRO 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 4 decision according to the time period at Subsection 67-19a-407(1)(a)(i), not Section 63G-4-302.

(13) 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 evidentiary/step 4 decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the evidentiary/step 4 decision. The CSRO may not share any cost for a transcript or transcription of the evidentiary/step 4 hearing.

### **R137-1-22. 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 previous Career Service Review Board or a CSRO hearing officer. Section 63G-4-503 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 CSRO.

(b) The petition shall be date-stamped upon receipt in the CSRO.

(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:

(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 administrator deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The administrator shall

prepare the declaratory ruling without unnecessary delay. The CSRO 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 and Distribution Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the CSRO must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRO 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 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 CSRO.

### **KEY: grievance procedures**

**July 1, 2010**

**Notice of Continuation July 18, 2011**

**34A-5-106**

**67-19-16**

**67-19-30**

**67-19-31**

**67-19-32**

**67-19a et seq.**

**63G-4 et seq.**



**R156. Commerce, Occupational and Professional Licensing.**  
**R156-1. General Rule of the Division of Occupational and Professional Licensing.**

**R156-1-101. Title.**

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

**R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or this rule:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Cancel" or "cancellation" means nondisciplinary action by the Division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

(4) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(5) "Denial of licensure" means action by the Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(6)(a) "Disciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(b) "Disciplinary action", as used in Subsection 58-1-401(5), shall not be construed to mean an adverse licensure action taken in response to an application for licensure. Rather, as used in Subsection 58-1-401(5), it shall be construed to mean an adverse action initiated by the Division.

(7) "Diversion agreement" means a formal written agreement between a licensee, the Division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section

58-1-404.

(8) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(9) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(10) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the Division under the authority of Subsection 58-1-108(2).

(11) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(12) "Inactive" or "inactivation" means action by the Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the Division regulatory and compliance officer, or if the Division regulatory and compliance officer is unable to so serve for any reason, a Department administrative law judge, or if both the Division regulatory and compliance officer and a Department administrative law judge are unable to so serve for any reason, an alternate designated by the director in writing.

(14) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(15) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(16) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iii) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(iv) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(v) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vi) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

- (vii) remorse.
- (b) The following factors should not be considered as mitigating circumstances:
- (i) forced or compelled restitution;
  - (ii) withdrawal of complaint by client or other affected persons;
  - (iii) resignation prior to disciplinary proceedings;
  - (iv) failure of injured client to complain; and
  - (v) complainant's recommendation as to sanction.
- (17) "Nondisciplinary action" means adverse licensure action by the Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).
- (18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the Division under the authority of Subsection 58-1-203(1)(f).
- (19) "Probation" means disciplinary action placing terms and conditions upon a license;
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or
  - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.
- (21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.
- (22) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.
- (23) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.
- (24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (25)(a), placed on a license issued to an applicant for licensure.
- (25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:
- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or
  - (b) issued to a licensee in place of the licensee's current license or disciplinary status.
- (26) "Revoke" or "revocation" means disciplinary action by the Division extinguishing a license.
- (27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.
- (28) "Surrender" means voluntary action by a licensee giving back or returning to the Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.
- (29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.
- (30) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.
- (31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions

of law and do not constitute a reprimand, but which may address any or all of the following:

- (a) Division concerns;
- (b) allegations upon which those concerns are based;
- (c) potential for administrative or judicial action; and
- (d) disposition of Division concerns.

#### **R156-1-102a. Global Definitions of Levels of Supervision.**

(1) Except as otherwise provided by statute or rule, the global definitions of levels of supervision herein shall apply to supervision terminology used in Title 58 and Title R156, and shall be referenced and used, to the extent practicable, in statutes and rules to promote uniformity and consistency.

(2) Except as otherwise provided by statute or rule, all unlicensed personnel specifically allowed to practice a regulated occupation or profession are required to practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(3) Except as otherwise provided by statute or rule, all license classifications required to practice under supervision shall practice under an appropriate level of supervision defined herein, as specified by the licensing act or licensing act rule governing each occupation or profession.

(4) Levels of supervision are defined as follows:

(a) "Direct supervision" and "immediate supervision" mean the supervising licensee is present and available for face-to-face communication with the person being supervised when and where occupational or professional services are being provided.

(b) "Indirect supervision" means the supervising licensee:

- (i) has given either written or verbal instructions to the person being supervised;

(ii) is present within the facility in which the person being supervised is providing services; and

(iii) is available to provide immediate face-to-face communication with the person being supervised as necessary.

(c) "General supervision" means that the supervising licensee:

(i) has authorized the work to be performed by the person being supervised;

(ii) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio or some other means, without regard to whether the supervising licensee is located on the same premises as the person being supervised; and

(iii) can provide any necessary consultation within a reasonable period of time and personal contact is routine.

(5) "Supervising licensee" means a licensee who has satisfied any requirements to act as a supervisor and has agreed to provide supervision of an unlicensed individual or a licensee in a classification or licensure status that requires supervision in accordance with the provisions of this chapter.

#### **R156-1-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58.

#### **R156-1-106. Division - Duties, Functions, and Responsibilities.**

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers, home addresses, and e-mail addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the Division, if the reason for the request is deemed by the Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

#### **R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.**

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

#### **R156-1-109. Presiding Officers.**

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The Division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the Division regulatory and compliance officer is unable to so serve for any reason, a replacement specified by the director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55,

by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the Division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(e), and R156-46b-201(2)(a) through (c), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-201(1)(d), (h),(j), (m), (n), (p), and (t), and R156-46b-202(2)(a), (b) and (c)(ii), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the Division based upon the record developed at the hearing determining all issues pending before the Division to the director for a final order;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(f), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), (o), (q)(ii) and (iii), (r)(ii) and (iii), (s)(ii) and (iii), and R156-46b-202(2)(c)(iii).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Citation Hearing Officer. The regulatory and compliance officer or other citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise

referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in this rule; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(e) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), (s)(i) and (t), and R156-46b-202(2)(b) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. The director is designated as the presiding officer for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(c) as required by Subsection 58-55-103(1)(b)(iv).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in this rule; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), (o), (q)(i) and (r)(i).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

#### **R156-1-110. Issuance of Investigative Subpoenas.**

(1) All requests for subpoenas in conjunction with a Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis

for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the Division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

**R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.**

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the Division.

(7) Unless otherwise approved by the Division, peer or advisory committee meetings shall be held in the building occupied by the Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The Division shall provide a Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business,

except as otherwise provided in Title 58 or Title R156.

**R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.**

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

**R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.**

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the Division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the Division's Internet Renewal System.

**R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.**

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(16);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct will be repeated;

(5) the degree of risk that a condition will continue;

(6) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(7) the length of time since the last conduct or condition has occurred;

(8) the current criminal probationary or parole status of the applicant or licensee;

(9) the current administrative status of the applicant or licensee;

(10) results of previously submitted applications, for any regulated profession or occupation;

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer,

practice monitoring group, entity or association;

(12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(13) psychological evaluations; or

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) advanced practice registered nurse;
- (b) architect;
- (c) audiologist;
- (d) certified nurse midwife;
- (e) certified public accountant emeritus;
- (f) certified registered nurse anesthetist;
- (g) certified court reporter;
- (h) certified social worker;
- (i) chiropractic physician;
- (j) clinical social worker;
- (k) contractor;
- (l) deception detection examiner;
- (m) deception detection intern;
- (n) dental hygienist;
- (o) dentist;
- (p) direct-entry midwife;
- (q) genetic counselor;
- (r) health facility administrator;
- (s) hearing instrument specialist;
- (t) landscape architect;
- (u) licensed substance abuse counselor;
- (v) marriage and family therapist;
- (w) naturopath/naturopathic physician;
- (x) optometrist;
- (y) osteopathic physician and surgeon;
- (z) pharmacist;
- (aa) pharmacy technician;
- (bb) physical therapist;
- (cc) physician assistant;
- (dd) physician and surgeon;
- (ee) podiatric physician;
- (ff) private probation provider;
- (gg) professional counselor;
- (hh) professional engineer;
- (ii) professional land surveyor;
- (jj) professional structural engineer;
- (kk) psychologist;
- (ll) radiology practical technician;
- (mm) radiologic technologist;
- (nn) security personnel;
- (oo) speech-language pathologist; and
- (pp) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting

activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

**R156-1-308a. Renewal Dates.**

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Architect	May 31	even years
(4) Athlete Agent	September 30	even years
(5) Athletic Trainer	May 31	odd years
(6) Audiologist	May 31	odd years
(7) Barber	September 30	odd years
(8) Barber School	September 30	odd years
(9) Building Inspector	November 30	odd years
(10) Burglar Alarm Security	November 30	even years
(11) C.P.A. Firm	September 30	even years
(12) Certified Court Reporter	May 31	even years
(13) Certified Dietitian	September 30	even years
(14) Certified Medical Language Interpreter	March 31	odd years
(15) Certified Nurse Midwife	January 31	even years
(16) Certified Public Accountant	September 30	even years
(17) Certified Registered Nurse Anesthetist	January 31	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Social Worker	September 30	even years
(21) Construction Trades Instructor	November 30	odd years
(22) Contractor	November 30	odd years
(23) Controlled Substance License	Attached to primary license renewal	
(24) Controlled Substance Precursor	May 31	odd years
(25) Controlled Substance Handler	May 31	odd years
(26) Cosmetologist/Barber	September 30	odd years
(27) Cosmetology/Barber School	September 30	odd years
(28) Deception Detection	November 30	even years
(29) Dental Hygienist	May 31	even years
(30) Dentist	May 31	even years
(31) Direct-entry Midwife	September 30	odd years
(32) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(33) Electrologist	September 30	odd years
(34) Electrology School	September 30	odd years
(35) Elevator Mechanic	November 30	even years
(36) Environmental Health Scientist	May 31	odd years
(37) Esthetician	September 30	odd years
(38) Esthetics School	September 30	odd years
(39) Factory Built Housing Dealer	September 30	even years
(40) Funeral Service Director	May 31	even years
(41) Funeral Service Establishment	May 31	even years
(42) Genetic Counselor	September 30	even years
(43) Health Facility Administrator	May 31	odd years
(44) Hearing Instrument Specialist	September 30	even years
(45) Internet Facilitator	September 30	odd years
(46) Landscape Architect	May 31	even years
(47) Licensed Practical Nurse	January 31	even years

(48)	Licensed Substance Abuse Counselor	May 31	odd years
(49)	Marriage and Family Therapist	September 30	even years
(50)	Massage Apprentice, Therapist	May 31	odd years
(51)	Master Esthetician	September 30	odd years
(52)	Medication Aide Certified	March 31	odd years
(53)	Nail Technologist	September 30	odd years
(54)	Nail Technology School	September 30	odd years
(55)	Naturopath/Naturopathic Physician	May 31	even years
(56)	Occupational Therapist	May 31	odd years
(57)	Occupational Therapy Assistant	May 31	odd years
(58)	Optometrist	September 30	even years
(59)	Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
(60)	Outfitter/Hunting Guide	May 31	even years
(61)	Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
(62)	Pharmacist	September 30	odd years
(63)	Pharmacy Technician	September 30	odd years
(64)	Physical Therapist	May 31	odd years
(65)	Physical Therapist Assistant	May 31	odd years
(66)	Physician Assistant	May 31	even years
(67)	Physician and Surgeon, Online Prescriber	January 31	even years
(68)	Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
(69)	Podiatric Physician	September 30	even years
(70)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(71)	Private Probation Provider	May 31	odd years
(72)	Professional Counselor	September 30	even years
(73)	Professional Engineer	March 31	odd years
(74)	Professional Geologist	March 31	odd years
(75)	Professional Land Surveyor	March 31	odd years
(76)	Professional Structural Engineer	March 31	odd years
(77)	Psychologist	September 30	even years
(78)	Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
(79)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(80)	Registered Nurse	January 31	odd years
(81)	Respiratory Care Practitioner	September 30	even years
(82)	Security Personnel	November 30	even years
(83)	Social Service Worker	September 30	even years
(84)	Speech-Language Pathologist	May 31	odd years
(86)	Veterinarian	September 30	even years
(87)	Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Associate Professional Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year

term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(f) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(g) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(h) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

**R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.**

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

**R156-1-308c. Renewal of Licensure Procedures.**

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection (4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(3), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under

Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

**R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.**

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

**R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensure.**

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

**R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.**

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b, with

allowance for exceptions.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the Division's action as permitted by Subsection 63G-4-201(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the Division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

(3)(a) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(c) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed, renewed, or reinstated shall include the following:

(i) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the Division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the applicant's conditional license automatically will or did expire on the expiration date shown on the conditional license, and that the applicant will not be issued, renewed, or reinstated unless or until the applicant timely requests review; and

(v) that if the applicant timely requests review, the applicant's conditionally issued, renewed, or reinstated license does not expire until an order is issued unconditionally issuing, renewing, reinstating, denying, or partially denying the initial issuance, renewal, or reinstatement of the applicant's license.

**R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.**

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the Division demonstrating compliance with requirements and/or



conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure;

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(d) pay the established license renewal fee and the reinstatement fee.

**R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.**

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

**R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.**

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all

supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

**R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.**

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

**R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.**

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

**R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.**

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

**R156-1-310. Cheating on Examinations.**

(1) Policy.

The passing of an examination, when required as a

condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish

conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

**R156-1-404a. Diversion Advisory Committees Created.**

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

**R156-1-404b. Diversion Committees Duties.**

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

**R156-1-404c. Diversion - Eligible Offenses.**

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

**R156-1-404d. Diversion - Procedures.**

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by

legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

**R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.**

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

**R156-1-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State

Medical Boards, which is hereby adopted and incorporated by reference.

**R156-1-502. Administrative Penalties.**

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE FINE SCHEDULE	
FIRST OFFENSE	
Violation	Fine
58-1-501(1)(a)	\$ 500.00
58-1-501(1)(c)	\$ 800.00
SECOND OFFENSE	
58-1-501(1)(a)	\$1,000.00
58-1-501(1)(c)	\$1,600.00
THIRD OFFENSE	
Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(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.

**R156-1-503. Reporting Disciplinary Action.**

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

**KEY: diversion programs, licensing, occupational licensing, supervision**

**July 26, 2011  
Notice of Continuation March 1, 2007**

**58-1-106(1)(a)  
58-1-308  
58-1-501(4)**

**R156. Commerce, Occupational and Professional Licensing.****R156-17b. Pharmacy Practice Act Rule.****R156-17b-101. Title.**

This rule is known as the "Pharmacy Practice Act Rule".

**R156-17b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(5) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(6) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(7) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(8) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(9) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(10) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(11) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(12) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party

logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(13) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(14) "Drugs", as used in this rule, means drugs or devices.

(15) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(16) "FDA" means the United States Food and Drug Administration and any successor agency.

(17) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(18) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(19) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(20) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(21) "Maintenance medications" means medications the patient takes on an ongoing basis.

(22) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(23) "MPJE" means the Multistate Jurisprudence Examination.

(24) "NABP" means the National Association of Boards of Pharmacy.

(25) "NAPLEX" means North American Pharmacy

## Licensing Examination.

(26) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(27) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(28) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(29) "PIC", as used in this rule, means the pharmacist-in-charge.

(30) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(31) "PTCB" means the Pharmacy Technician Certification Board.

(32) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(33) "Refill" means to fill again.

(34) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(35) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(36) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(37) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(38) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of

pharmaceutical care.

(39) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

(40) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(41) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 32-NF 27), 2009 edition, which is official from May 1, 2009 through Supplement 2, dated December 1, 2009, which is hereby adopted and incorporated by reference.

(42) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(43) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

**R156-17b-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 17b.

**R156-17b-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.

**R156-17b-105. Licensure - Administrative Inspection.**

In accordance with Subsection 58-17b-103(3)(e), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection will be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division that are found to be in compliance with this chapter will be returned to the PIC of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall

be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance destruction form will be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

**R156-17b-301. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.**

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

- (a) closed door;
- (b) hospital clinic pharmacy;
- (c) methadone clinics;
- (d) nuclear;
- (e) branch;
- (f) hospice facility pharmacy;
- (g) veterinarian pharmaceutical facility;
- (h) pharmaceutical administration facility; and
- (i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

- (a) manufacturing;
- (b) producing;
- (c) wholesaling;
- (d) distributing; and
- (e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a PIC licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a PIC and include:

- (a) medical gases providers;
- (b) analytical laboratories
- (c) durable medical equipment providers; and
- (d) central order entry pharmacies.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a PIC shall have one PIC who is employed on a full-time basis as defined by the employer, who acts as a PIC for one pharmacy. However, the PIC may be the PIC of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(8) The PIC shall comply with the provisions of Section R156-17b-603.

**R156-17b-302. Licensure - Examinations.**

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that must be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a minimum passing score as established by NABP.

(2) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(3) In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75 and taken at the time of making application for licensure; and

(b) the PTCB or ExCPT with a passing score as established by the certifying body. The certificate must exhibit a valid date and that the certification is active.

(4) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

**R156-17b-303. Licensure - Pharmacist by Endorsement.**

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

**R156-17b-304. Licensure - Education Requirements.**

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(6), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

(i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;

(ii) hygiene and aseptic techniques;

(iii) terminology, abbreviations and symbols;

(iv) pharmaceutical calculations;

(v) identification of drugs by trade and generic names, and therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory;

(viii) computer applications in the pharmacy; and

(ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

(i) the specific manner in which supervision will be completed; and

(ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one year time frame must complete a minimum of 180 hours of refresher practice in a pharmacy approved by the Board if it has been more than six months since having exposure to pharmacy practice.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than two years and wishes to renew that license must complete a minimum of 180 hours of refresher hours in an approved pharmacy under the direct supervision of a pharmacist.

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as at technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; and

(c) has passed and maintained current PTCB or ExCPT certification and passed the Utah law exam.

#### **R156-17b-305. Temporary Licensure.**

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist except for the passing of the required examination, if the applicant:

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure;

(b) submit a complete application for licensure as a pharmacist except the passing of the NABP and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

#### **R156-17b-306. Licensure - Pharmacist - Pharmacy Internship Standards.**

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist include the following:

(a) At least 1500 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both.

(i) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

(A) community pharmacy;

(B) institutional pharmacy; and

(C) any clinical setting.

(ii) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(b) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(c) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(d) No credit will be awarded for didactic experience.

(2) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern must notify the Division within 15 days of the suspension or dismissal.

(3) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender the pharmacy intern license to the Division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

#### **R156-17b-307. Licensure - Meet with the Board.**

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the State Board of Pharmacy for

the purpose of evaluating the applicant's qualifications for licensure.

**R156-17b-308. 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 17b is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

**R156-17b-309. Continuing Education.**

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

- (a) 30 hours for a pharmacist; and
- (b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle 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.

(4) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

- (i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

- (ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy;

- (iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board; and

- (iv) training or educational presentations offered by the Division.

(b) for pharmacy technicians:

- (i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

- (ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

- (iii) educational meetings that meet ACPE continuing

education criteria sponsored by the Utah Pharmacist Association, the Utah Society of Health-System Pharmacists or other professional organization or association; and

- (iv) training or educational presentations offered by the Division.

(5) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) Pharmacists:

- (i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

- (ii) a minimum of 15 hours shall be in drug therapy or patient management; and

- (iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

- (i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

- (ii) a minimum of one hour shall be in pharmacy law or ethics.

- (iii) documentation of current PTCB or ExCPT certification will count as meeting the requirement for continuing education.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after the 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.

**R156-17b-310. Exemption from Licensure - Dispensing of Cosmetic or Injectable Weight Loss Drugs.**

(1) A cosmetic drug that can be dispensed by a prescribing practitioner or optometrist in accordance with Subsection 58-17b-309 is limited to Latisse.

(2) An injectable weight loss drug that can be dispensed by a prescribing practitioner in accordance with Subsection 58-17b-309 is limited to human chorionic gonadotropin.

(3) In accordance with Subsection 58-17b-309(4)(c), a prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), to the prescribing practitioner's or optometrist's patients shall have a label securely affixed to the container indicating the following minimum information:

- (a) the name, address and telephone number of the prescribing practitioner or optometrist prescribing and dispensing the drug;

- (b) the serial number of the prescription as assigned by the dispensing prescribing practitioner or optometrist;

- (c) the filling date of the prescription or its last dispensing date;

- (d) the name of the patient;

- (e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

- (f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and

- (g) the beyond use date.

(4) A prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), shall keep inventory records for each drug dispensed and a prescription dispensing medication profile for each patient receiving a drug dispensed by the prescribing practitioner or optometrist. Those records shall be made available to the Division upon request by the Division.

- (a) The general requirements for an inventory of drugs



dispensed by a prescribing practitioner or optometrist include:

(i) the prescribing practitioner or optometrist shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;

(ii) the inventory records must be maintained for a period of five years and be readily available for inspection;

(iii) the inventory records shall be filed separately from all other records;

(iv) the person taking the inventory and the prescribing practitioner or optometrist shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the prescribing practitioner or optometrist and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(v) the initial inventory shall be completed within three working days of the date on which the prescribing practitioner or optometrist begins to dispense a drug under Section 58-17b-309; and

(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.

(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a prescribing practitioner or optometrist in accordance with Section 58-17b-309 for a period of at least one year from the date of the most recent prescription fill or refill. The medication profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:

(i) full name of the patient, address, telephone number, date of birth or age, and gender;

(ii) patient history where significant, including known allergies and drug reactions; and

(iii) a list of drugs being dispensed including:

(A) name of prescription drug;

(B) strength of prescription drug;

(C) quantity dispensed;

(D) prescription drug lot number and name of manufacturer;

(E) date of filling or refilling;

(F) charge for the prescription drug as dispensed to the patient;

(G) any additional comments relevant to the patient's drug use; and

(H) documentation that patient counseling was provided in accordance with Subsection (5).

(5) A prescribing practitioner or optometrist who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(c), shall include the following elements when providing patient counseling:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) prescribing practitioner or optometrist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(6) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that must be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2) provides that the storage space shall be:

(a) kept in an area that is well lighted, well ventilated, clean and sanitary;

(b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;

(c) equipped with a security system to permit detection of entry at all times when the prescribing practitioner's or optometrist's office or clinic is closed;

(d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and

(e) securely locked with only the prescribing practitioner or optometrist having access when the prescribing practitioner's or optometrist's office or clinic is closed.

(7) In accordance with Subsection 58-17b-309(5), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2) requires reconstitution or compounding to prepare the drug for administration, the prescribing practitioner or optometrist shall follow the USP-NF 797 standards for sterile compounding.

(8) In accordance with Subsection 58-17b-309(5), factors that shall be considered by licensing boards when determining if a drug may be dispensed by a prescribing practitioner or optometrist, include whether:

(a)(i) the drug has FDA approval;

(ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or

(B) the prescribing practitioner or optometrist takes full responsibility for prescribing and dispensing a drug for off-label use;

(b) the drug has been approved for self administration by the FDA;

(c) the stability of the drug is adequate for the supply being dispensed; and

(d) the drug can be safely dispensed by a prescribing practitioner or optometrist.

#### **R156-17b-401. Disciplinary Proceedings.**

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same restrictions as the pharmacy intern license.

(2) A pharmacist, pharmacy intern or pharmacy technician whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time that he can demonstrate the ability to resume competent practice.

#### **R156-17b-402. Administrative Penalties.**

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply.

(1) Preventing or refusing to permit any authorized agent of the Division to conduct an inspection:

initial offense: \$500 - \$2,000

subsequent offense(s): \$5,000

(2) Failing to deliver the license or permit or certificate to the Division upon demand:

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(3) Using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so:

- initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000
- (4) Conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000
- (5) Buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words:  
 initial offense: \$1,000 - \$5,000  
 subsequent offense(s): \$10,000
- (6) Using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$200 - \$1,000
- (7) Illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000
- (8) Filling, refilling or advertising the filling or refilling of prescription drugs when not licensed to do so:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000
- (9) Requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,500 - \$10,000
- (10) Being in possession of a drug for an unlawful purpose:  
 initial offense: \$500 - \$1,000  
 subsequent offense(s): \$1,500 - \$5,000
- (11) Dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,500 - \$10,000
- (12) Selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure:  
 initial offense: \$1,000 - \$5,000  
 subsequent offense(s): \$10,000
- (13) Using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$1,000 - \$2,500
- (14) Willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,500 - \$10,000
- (15) Paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party:  
 initial offense: \$2,500 - \$5,000
- subsequent offense(s): \$5,500 - \$10,000
- (16) Misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices:  
 initial offense: \$1,000 - \$5,000  
 subsequent offense(s): \$10,000
- (17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:  
 initial offense: \$1,000 - \$5,000  
 subsequent offense(s): \$10,000
- (18) Violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,500 - \$10,000
- (19) Failure to follow USP-NF Chapter 797 guidelines:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,500 - \$10,000
- (20) Failure to follow USP-NF Chapter 795 guidelines:  
 initial offense: \$250 - \$500  
 subsequent offense(s): \$500 - \$750
- (21) Administering without appropriate guidelines or lawful order:  
 initial offense: \$500 - \$2,000  
 subsequent offense(s): \$2,000 - \$10,000
- (22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$500 - \$1,000
- (23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$2,000 - \$10,000
- (24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$500 - \$1,000
- (25) Compounding a prescription drug for sale to another pharmaceutical facility:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$500 - \$1,000
- (26) Preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner:  
 initial offense: \$500 - \$1,000  
 subsequent offense(s): \$2,500 - \$5,000
- (27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:  
 initial offense: \$250 - \$500  
 subsequent offense(s): \$2,000 - \$10,000
- (28) Failing to comply with the continuing education requirements set forth in this rule:  
 initial offense: \$100 - \$500  
 subsequent offense(s): \$500 - \$1,000
- (29) Failing to provide the Division with a current mailing address within 10 days following any change of address:  
 initial offense: \$50 - \$100  
 subsequent offense(s): \$200 - \$300
- (30) Defaulting on a student loan:  
 initial offense: \$100 - \$200  
 subsequent offense(s): \$200 - \$500
- (31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:  
 initial offense: \$500 - \$1,000  
 subsequent offense(s): \$2,000 - \$10,000

- (32) Failing to comply with administrative inspections:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (33) Abandoning a pharmacy and/or leaving drugs accessible to the public:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (34) Failure to return or providing false information on a self-inspection report:  
initial offense: \$100 - \$250  
subsequent offense(s): \$300 - \$500
- (35) Failure to pay an administrative fine:  
Double the original penalty amount up to \$10,000
- (36) Any other conduct which constitutes unprofessional or unlawful conduct:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (37) Failure to maintain an appropriate ratio of personnel:  
Pharmacist initial offense: \$100 - \$250  
Pharmacist subsequent offense(s): \$500 - \$2,500  
Pharmacy initial offense: \$250 - \$1,000  
Pharmacy subsequent offense(s): \$500 - \$5,000
- (38) Unauthorized people in the pharmacy:  
Pharmacist initial offense: \$50 - \$100  
Pharmacist subsequent offense(s): \$250 - \$500  
Pharmacy initial offense: \$250 - \$500  
Pharmacy subsequent offense(s): \$1,000 - \$2,000
- (39) Failure to offer to counsel:  
Pharmacy personnel initial offense: \$500 - \$2,500  
Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000  
Pharmacy: \$2,000 per occurrence
- (40) Violations of the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division:  
initial violation: \$50 - \$100  
failure to comply within determined time: \$250 - \$500  
subsequent violations: \$250 - \$500  
failure to comply within established time: \$750 - \$1,000
- (41) Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (42) Impersonating a licensee or practicing under a false name:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (43) Knowingly employing an unlicensed person:  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$1,000 - \$5,000
- (44) Knowingly permitting the use of a license by another person:  
initial offense: \$500 - \$1,000  
subsequent offense(s): \$1,000 - \$5,000
- (45) Obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:  
initial offense: \$100 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (46) Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (47) Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (48) Engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (49) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (50) Engaging in conduct, including the use of intoxicants or drugs, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (51) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (52) Practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (53) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (54) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (55) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:  
initial offense: \$100 - \$500  
subsequent offense(s): \$200 - \$1,000
- (56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:  
initial offense: \$100 - \$1,000  
subsequent offense(s): \$500 - \$2,000
- (57) Failure to comply with the PIC standards:  
initial offense: \$500 - \$2,000  
subsequent offense(s): \$2,000 - \$10,000
- (58) Failure to resolve identified drug therapy management problems:  
initial offense: \$500 - \$2,500  
subsequent offense: \$5,000 - \$10,000
- (59) Dispensing a medication that has been discontinued by the FDA:  
initial offense: \$500 - \$1,000  
subsequent offense: \$2,500 - \$5,000
- (60) Failing to keep or report accurate records of training hours:  
initial offense: \$100 - \$500  
subsequent offense: \$200 - \$1,000
- (61) Failing to provide PIC information to the Division:  
initial offense: \$100 - \$500  
subsequent offense: \$200 - \$1,000
- (62) Requiring a pharmacist to operate a pharmacy with unsafe personnel ratio:  
initial offense: \$500 - \$2,000  
subsequent offense: \$2,000 - \$10,000

**R156-17b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

- (1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;
- (2) failing to comply with the USP-NF Chapters 795 and 797;
- (3) failing to comply with the continuing education requirements set forth in these rules;
- (4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;
- (5) defaulting on a student loan;
- (6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;
- (7) failing to comply with administrative inspections;
- (8) abandoning a pharmacy or leaving prescription drugs accessible to the public;
- (9) failing to identify licensure classification when communicating by any means;
- (10) the practice of pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-306(4)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);
- (11) allowing any unauthorized persons in the pharmacy;
- (12) failing to offer to counsel any person receiving a prescription medication;
- (13) failing to pay an administrative fine that has been assessed in the time designated by the Division;
- (14) failing to comply with the PIC standards as established in Section R156-17b-603;
- (15) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);
- (16) dispensing medication that has been discontinued by the FDA;
- (17) failing to keep or report accurate records of training hours;
- (18) failing to provide PIC information to the Division within 30 days of a change in PIC; and
- (19) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare.

**R156-17b-601. Operating Standards - Pharmacy Technician.**

In accordance with Subsection 58-17b-102(55), practice as a licensed pharmacy technician is defined as follows:

- (1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:
  - (a) receiving written prescriptions;
  - (b) taking refill orders;
  - (c) entering and retrieving information into and from a database or patient profile;
  - (d) preparing labels;
  - (e) retrieving medications from inventory;
  - (f) counting and pouring into containers;
  - (g) placing medications into patient storage containers;
  - (h) affixing labels;
  - (i) compounding;
  - (j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection R156-17b-304(3)(ix);

(k) accepting new prescription drug orders telephonically or electronically submitted for a pharmacist to review; and

(1) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new verbal prescriptions or medication orders, clarify prescriptions or medication orders nor perform drug utilization reviews.

(3) Pharmacy technicians, including no more than one pharmacy technician-in-training, shall be supervised on-site by a pharmacist in accordance with Subsection R156-17b-603(19).

**R156-17b-602. Operating Standards - Pharmacy Intern.**

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(50), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

**R156-17b-603. Operating Standards - Pharmacist-in-charge.**

The PIC shall have the responsibility to oversee the implementation and adherence to pharmacy policies that address the following:

(1) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

(a) packaging, preparation, compounding and labeling; and

(b) ensuring that drugs are dispensed safely and accurately as prescribed;

(2) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(3) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

(4) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;

(5) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(6) education and training of pharmacy technicians;

(7) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(8) disposal and distribution of drugs from the pharmacy;

(9) bulk compounding of drugs;

(10) storage of all materials, including drugs, chemicals and biologicals;

(11) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(12) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(13) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(14) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(15) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

(16) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy

system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(17) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(18) assuring that all personnel working in the pharmacy have the appropriate licensure; and

(19) assuring that no pharmacy or pharmacist operates the pharmacy or allows operation of the pharmacy with a ratio of pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare; and

(20) assuring that the PIC assigned to the pharmacy is recorded with the Division.

#### **R156-17b-604. Operating Standards - Closing a Pharmacy.**

At least 14 days prior to the closing of a pharmacy, the PIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

(d) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the PIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the PIC shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(6) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or

disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter must be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC cannot provide notification 14 days prior to the closing, the PIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

#### **R156-17b-605. Operating Standards - Inventory Requirements.**

(1) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records must be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a typewritten or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device must be promptly transcribed;

(e) the inventory may be taken either as of the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents must be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances; and

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(2) Requirement for taking the initial inventory shall include the following:

(a) all pharmacies having any stock of controlled

substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with none of the drugs specified in paragraph (2)(a) of this section on hand, the pharmacy shall record this fact as the initial inventory; and

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (3) of this section.

(3) Requirement for annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(4) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(5) Requirement for taking inventory when closing a pharmacy includes the PIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(6) Requirements specific to taking inventory in a Class B pharmacy shall include the following:

(a) all Class B pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy; and

(b) the inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory shall be listed separately as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of the drugs on hand in all other departments shall be identified by department.

(7) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the date of expiration imprinted on the label.

#### **R156-17b-606. Operating Standards - Approved Preceptor.**

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to no more than two pharmacy interns during a working shift; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship

Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

#### **R156-17b-607. Operating Standards - Supportive Personnel.**

(1) In accordance with Subsection 58-17b-102(66)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:

(a) all supportive personnel shall be under the supervision of a licensed pharmacist; and

(b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of refilled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

#### **R156-17b-608. Reserved.**

Reserved.

#### **R156-17b-609. Operating Standards - Medication Profile System.**

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;  
 (v) charge for the prescription drug as dispensed to the patient; and

(c) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

**R156-17b-610. Operating Standards - Patient Counseling.**

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:

(a) the name and description of the prescription drug;  
 (b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug, when known, and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records must be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Counseling shall be:

(a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;

(b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and

(c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.

(6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.

(7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:

(a) date of the delivery;

(b) unique identification number of the prescription drug order;

(c) patient's name;

(d) patient's phone number or the phone number of the person picking up the prescription; and

(e) signature of the person picking up the prescription.

(8) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

(c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

**R156-17b-611. Operating Standards - Drug Therapy Management.**

(1) In accordance with Subsections 58-17b-102(17) and 58-17b-601(1), decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management may include:

(a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;

(b) collecting and reviewing patient histories;

(c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and

(e) such other patient care services as may be allowed by rule.

(2) For the purpose of promoting therapeutic appropriateness, a pharmacist shall at the time of dispensing a prescription, or a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant conditions, situations or items, such as:

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage or duration of drug treatment;

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

(3) Upon identifying any clinically significant conditions, situations or items listed in Subsection (2) above, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

**R156-17b-612. Operating Standards - Prescriptions.**

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and

authorization, may be accepted by a pharmacist or pharmacy intern.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern and pharmacy technician.

(4) In accordance with Section 58-17b-609, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist or pharmacy intern at the pharmacy holding the prescription to a pharmacist or pharmacy intern at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist or pharmacy intern and receiving pharmacist or pharmacy intern shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacists or pharmacy interns or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist or pharmacy intern transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist or pharmacy intern receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist or pharmacy intern to which such prescription is transferred; and

(E) the name of the pharmacist or pharmacy intern transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders which have been previously transferred; and

(f) a pharmacist or pharmacy intern may not refuse to transfer original prescription information to another pharmacist or pharmacy intern who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner must be obtained prior to dispensing

any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy which contains the essential information;

(b) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist complies with the requirements of Subsections (11)(c) through (g) of this section.

#### **R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.**

In accordance with Subsections 58-17b-102(3) and 58-17b-601(1), prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;



(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

**R156-17b-614a. Operating Standards - Operating Standards, Class A and B Pharmacy.**

(1) In accordance with Subsection 58-17b-601(1),

standards for the operations for a Class A and Class B pharmacy include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) must follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;

(d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;

(e) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(f) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

- (iii) component manufacturer or suitable identifying number;
- (iv) container specifications (e.g. syringe, pump cassette);
- (v) unique lot or control number assigned to batch;
- (vi) expiration date of batch prepared products;
- (vii) date of preparation;
- (viii) name, initials or electronic signature of the person or persons involved in the preparation;
- (ix) names, initials or electronic signature of the responsible pharmacist;
- (x) end-product evaluation and testing specifications, if applicable; and
- (xi) comparison of actual yield to anticipated yield, when appropriate;
- (g) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:
  - (i) the unique lot number assigned to the batch;
  - (ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;
  - (iii) quantity;
  - (iv) expiration date and time, when applicable;
  - (v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and
  - (vi) device-specific instructions, where appropriate;
  - (h) the expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;
  - (i) sources of drug stability information shall include the following:
    - (A) references can be found in Trissel's "Handbook on Injectable Drugs", 13th Edition, 2004;
    - (B) manufacturer recommendations; and
    - (C) reliable, published research;
    - (ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and
    - (iii) methods for establishing expiration dates shall be documented; and
    - (i) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.
- (4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:
  - (a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'
  - (b) R156-1, General Rules of the Division of Occupational and Professional Licensing;
  - (c) Title 58, Chapter 17b, Pharmacy Practice Act;
  - (d) R156-17b, Utah Pharmacy Practice Act Rule;
  - (e) Title 58, Chapter 37, Utah Controlled Substances Act;
  - (f) R156-37, Utah Controlled Substances Act Rules;
  - (g) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;
  - (h) current FDA Approved Drug Products (orange book); and
  - (i) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.
- (5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.
- (6) Facilities shall have a counseling area to allow for

confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility must maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

**R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.**

In accordance with Subsections 58-17b-102(7) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy

location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

#### **R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.**

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

#### **R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.**

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure

as a Class B pharmacy.

(8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

**R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.**

In accordance with Subsections 58-17b-102(48) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor must provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publically traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial

level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities must undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer must publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) In accordance with Section 58-17b-307, the Division shall require a criminal background check of the applicant, including but not limited to all key personnel involved in the operation of the pharmaceutical wholesaler or manufacturer, including the most senior person responsible for facility operation, purchasing, and inventory control and the person they report to in order to determine if an applicant or others associated with the ownership, management, or operations of the pharmaceutical wholesaler or manufacturer have committed criminal acts that would constitute grounds for denial of licensure.

(9) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(10) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against

theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(11) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(12) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form;

and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(13) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription

drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(14) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(15) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(14), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(16) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of

the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(17) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within

three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(18) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(19) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(20) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(21) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

#### **R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.**

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

#### **R156-17b-617. Operating Standards - Class E pharmacy.**

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), the operating standards for a Class E pharmacy shall include a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) identity of the drugs that will be purchased, stored, used and accounted for; and

(d) identity of any licensed healthcare provider associated with operation.

(2) A Class E pharmacy preparing sterile compounds must

follow the USP-NF Chapter 797 Compounding for sterile preparations.

**R156-17b-618. Change in Ownership or Location.**

(1)(a) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility that proposes to change its location or ownership shall make application for a new license and receive approval from the Division prior to the proposed change.

(b) Upon approval of the change in ownership or location, the original licenses shall be surrendered to the Division.

(2)(a) In accordance with Section 58-17b-614, a licensed pharmaceutical facility that proposes to change its names without a change in ownership shall submit the request in writing upon a form provided by the Division, no later than ten business days before the proposed name change. The request for a name change must be approved by the Division prior to implementing the change.

(b) Upon approval of the name change, the original licenses shall be surrendered to the Division.

**R156-17b-619. Operating Standards - Third Party Payors.**  
Reserved.

**R156-17b-620. Operating Standards - Automated Pharmacy System.**

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of

personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

**R156-17b-621. Operating Standards - Pharmacist Administration - Training.**

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease

Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

**KEY: pharmacists, licensing, pharmacies**

**July 26, 2011**

**58-17b-101**

**Notice of Continuation February 23, 2010**

**58-17b-601(1)**

**58-37-1**

**58-1-106(1)(a)**

**58-1-202(1)(a)**



**R156. Commerce, Occupational and Professional Licensing.  
R156-46b. Division Utah Administrative Procedures Act Rule.**

**R156-46b-101. Title.**

This rule is known as the "Division Utah Administrative Procedures Act Rule."

**R156-46b-103. Authority - Purpose.**

This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

- (a) classifying Division adjudicative proceedings;
- (b) clarifying the identity of presiding officers at Division adjudicative proceedings; and
- (c) defining procedures for Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-4.

**R156-46b-201. Formal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

- (a) denial of application for renewal of licensure, except denial of an application for renewal of a contractor, plumber or electrician license under Title 58, Chapter 55;
- (b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;
- (d) special appeals board held in accordance with Section 58-1-402;
- (e) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and
- (f) board of appeal held in accordance with Subsection 15A-1-207(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

- (a) disciplinary proceedings, except those classified as informal proceedings under Section R156-46b-202 that result in the following sanctions:
  - (i) revocation of licensure;
  - (ii) suspension of licensure;
  - (iii) restricted licensure;
  - (iv) probationary licensure;
  - (v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;
  - (vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and
  - (vii) issuance of a public reprimand;
- (b) unilateral modification of a disciplinary order; and
- (c) termination of diversion agreements.

**R156-46b-202. Informal Adjudicative Proceedings.**

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

- (a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;
- (b) denial of application for initial licensure or relicensure;
- (c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 15A-1-207(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) citation hearings held in accordance with citation authority established under Title 58;

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes;

(q) denial of application for renewal of:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;

(r) denial of application for reinstatement of:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;

(s) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306; and

(t) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(c) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306.

**R156-46b-301. Designation.**

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

**R156-46b-401. In General.**

(1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4-114, and this rule.

(2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4-114, and this rule.

**R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.**

(1) Evidentiary hearings are not required for informal Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the Division, or together with the request for agency action if the proceeding was not initiated by the Division.

(3) An evidentiary hearing is required for the following informal proceedings:

(a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 58-56-8(3); and

(b) R156-46b-202(1)(l), contested citation hearings held in accordance with Title 58.

(4) An evidentiary hearing is permitted for an informal proceeding pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

**R156-46b-404. Orders in Informal Adjudicative Proceedings.**

(1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

**R156-46b-405. Informal Agency Advice.**

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

**KEY: administrative procedures, government hearings, occupational licensing**  
**July 26, 2011** **63G-4-102(6)**  
**Notice of Continuation January 31, 2011** **58-1-106(1)(a)**

**R212. Community and Culture, History.****R212-4. Ancient Human Remains.****R212-4-1. General Authority.**

Section 9-8-309 defines the Antiquities Section's duties with respect to recovery, disposition, and determination of ownership of ancient human remains found on nonfederal lands that are not state lands in the State of Utah.

**R212-4-2. Purpose.**

The primary purpose of the 9-8-309 and this rule is to assure that ancient human remains are given respectful, lawful, and scientifically-sound treatment, that landowners are not harmed or burdened by a discovery of ancient human remains on their property, and to ensure that steps are taken to determine lawful ownership of recovered remains.

**R212-4-3. Definitions.**

A. "Antiquities Section" means the Antiquities Section of the Division of State History.

B. "ancient" means one-hundred years of age or older.

C. "Native American" means of or relating to a tribe, people, or culture that is indigenous to the United States.

D. "human remains" means all or part of a physical individual, in any stage of decomposition, and objects on or in association with the physical individual that were placed there as part of the death rite or ceremony of a culture.

E. "nonfederal land" includes land owned or controlled by the state, a county, city, or town, an Indian tribe, if the land is not held in trust by the United States for the Indian tribe or the Indian tribe's members, a person other than the federal government; or school and institutional trust lands as defined in Section 53C-1-103.

F. "state land" means any land owned by the state including the state's legislative and judicial branches, departments, divisions, agencies, boards, commissions, councils, and committees, institutions of higher education as defined under Section 53B-3-102. "State land" does not include land owned by a political subdivision of the state, land owned by a school district; private land, school and institutional trust lands as defined in Section 53C-1-103.

G. "excavate" means the scientific disturbance or removal of surface or subsurface archaeological resources by qualified archaeologists in compliance with Title 9, Chapter 8, Part 3, Antiquities.

H. "Director" means the Director of the Utah Division of State History.

I. "local law enforcement agency" means the police department, sheriff's office, or other agency having jurisdiction.

**R212-4-4. Response to Notification of a Discovery of Ancient Human Remains.**

Human remains that are discovered in conjunction with a project or undertaking subject to Chapter 8, part 4 Historic Sites, or Section 106 of the National Historic Preservation Act, are the responsibility of the project proponents, not the Antiquities Section. The Antiquities Section may however advise, assist and cooperate with responsible agencies in meeting their obligations regarding ancient human remains. For ancient human remains recovered as part of a compliance project from lands covered by 9-8-309, the Antiquities Section will, following appropriate analyses, and if asked, assume the role of the landowner for purposes of determination of ownership as per 9-9-403(8).

Upon notification that ancient human remains have been discovered, the Antiquities Section will gather information and consult as necessary with affected agencies and individuals and within two business days determine a course of action with approval of the landowner (leave remains in place or excavate and remove remains) and notify the affected agencies and

individuals of the decision.

**R212-4-5. Excavation and Removal of Ancient Human Remains.**

If the landowner grants permission for excavation and removal, the Antiquities Section or its agent will conduct respectful and scientifically-sound investigations of the remains and will remove from the site the remains within five days of receiving permission to excavate. If agreed to by the landowner, an alternative agreement may be reached (as provided for in 9-8-309(3)). If extraordinary circumstances (as defined in 9-8-309(1)(c)(i)) exist or arise requiring a time extension, the Antiquities Section will notify the landowner immediately.

If the landowner does not grant permission to excavate and remove the ancient human remains, the Antiquities Section will inform the landowner of the legal restrictions regarding human remains as specified in UCA 76-9-704.

Excavated human remains will be examined. Those determined to be Native American will be subject to Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. For the purposes of determining ownership under the act, for all remains excavated under the provisions of this part by the Antiquities Section, the Section will serve in the capacity of the landowner and will make lineal descent and cultural affiliation ownership determinations in consultation with the Division of Indian Affairs and allowing interested individuals and tribes to assert claims of ownership.

**KEY: ancient human remains, archaeology****June 25, 2008****Notice of Continuation July 13, 2011****9-8-309****9-8-403****76-9-704**

**R277. Education, Administration.****R277-404. Requirements for Assessments of Student Achievement.****R277-404-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "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.
- C. "Direct Writing Assessment (DWA)" means a USOE designated online test to measure writing performance for students in grades five and eight.
- D. "English Language Learner (ELL) student" means a student who is learning in English as a second language.
- E. "English Language Proficiency Test (ELPT)" means an assessment designed to measure the acquisition of the English language for English Language Learners.
- F. "Individualized Education Program (IEP)" means an individualized instructional and assessment plan for students who are eligible for special education services under the Individuals with Disabilities Education Act of 2004.
- G. "LEA" means local education agency, including local school boards/ public school districts and schools, and charter schools.
- H. "National Assessment of Education Progress (NAEP)" is the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.
- I. "Pre-post" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in achievement which has occurred during the school year.
- J. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.
- K. "Summative adaptive assessments" means assessments administered to assess a student's achievement. The assessments are administered online to measure the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly. Summative assessments provide summary information allowing a student or groups of students to be compared with other students.
- L. "Utah Alternate 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 the common core instructional goals and objectives in the student's individual education program (IEP).
- M. "USOE" means the Utah State Office of Education.

**R277-404-2. 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, 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 and to provide standards and procedures for a Board developed and directed comprehensive assessment system for all students as required by state and federal law.

**R277-404-3. Board Responsibilities.**

- A. Beginning in the 2011-2012 school year, the Board

shall implement a comprehensive assessment system for each student in grades K-12. This assessment system shall include:

- (1) Criterion-Referenced tests in English language arts for grades 3 - 11; mathematics for grades 3 - 12 and science for grades 4 - 8, earth systems, biology, physics and chemistry OR summative adaptive assessments in reading, language arts, mathematics and science for grades 3-12;
  - (2) Direct Writing Assessment (DWA) for grades 5 and 8;
  - (3) Pre-post kindergarten assessment for kindergarten-age students as determined by the LEA;
  - (4) one benchmark reading assessment determined by USOE for 1st, 2nd and 3rd grade students in the beginning, midpoint and end of year;
  - (5) Third grade summative end of year reading assessment;
  - (6) Utah Alternate Assessment (UAA);
  - (7) English Language Proficiency Test (ELPT); and
  - (8) National Assessment of Educational Progress (NAEP).
- B. The Board shall provide specific rules, administrative guidelines, timelines, procedures, and testing ethics training and requirements for all required assessments.

C. Schools must declare their decision to replace the Criterion-Referenced tests with the adaptive summative test no later than August 1 for the coming year.

D. The Board shall provide resources to the extent available and recommendations for:

- (1) LEA implementation of the assessment system; and
- (2) professional development for teachers to administer assessments and interpret assessment results.

E. All Utah public school students shall participate in the comprehensive assessment system unless the UAA or ELPT is approved for specific students consistent with federal law.

**R277-404-4. LEA Responsibilities.**

LEAs shall develop a comprehensive assessment system plan to include the assessments described in R277-404-3A. This plan shall, at a minimum, include:

- A. professional development for teachers to fully implement the assessment system;
- B. training for educators and appropriate paraprofessionals in the requirements of testing administration ethics;
- C. training for educators and appropriate paraprofessionals to utilize assessment results effectively to inform instruction; and
- D. adherence to all testing administration and ethics requirements consistent with R277-473.

**R277-404-5. School Responsibilities.**

A. LEAs shall develop a comprehensive assessment system implementation plan to include the assessments required under R277-404-3A. This plan shall, at a minimum, include:

- (1) professional development for teachers and others as directed by the LEA to fully implement system;
- (2) training for educators and appropriate paraprofessionals in the requirements of testing administration ethics;
- (3) training to utilize assessment tools and results to inform instruction; and
- (4) adherence to all testing administration and ethics requirements consistent with R277-473.

B. A student's IEP, ELL, or Section 504 team shall determine a student's participation in statewide assessments.

**KEY: assessment, student achievement  
July 11, 2011**

**Art X Sec 3  
53A-1-603 through 53A-1-611  
53A-1-401(3)**

**R277. Education, Administration.****R277-407. School Fees.****R277-407-1. Definitions.**

A. Fee: Any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through a school. For purposes of this policy, charges related to the National School Lunch Program are not fees.

B. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

C. Optional Project: A project chosen and retained by a student in lieu of a meaningful and productive project otherwise available to the student which would require only school-supplied materials.

D. "Provision in Lieu of Fee Waiver" means an alternative to fee payment and waiver of fee payment. A plan under which fees are paid in installments or under some other delayed payment arrangement is not a waiver or provision in lieu of fee waiver.

E. Student Supplies: Items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities. The term includes pencils, papers, notebooks, crayons, scissors, basic clothing for healthy lifestyle classes, and similar personal or consumable items over which a student retains ownership. The term does not include items such as the foregoing for which specific requirements such as brand, color, or a special imprint are set in order to create a uniform appearance not related to basic function.

F. "Supplemental Security Income for children with disabilities (SSI)" is a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

G. "Temporary Assistance for Needy Families (TANF)," (formerly AFDC) provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

H. Textbook: Book, workbook, and materials similar in function which are required for participation in a course of instruction.

I. Waiver: Release from the requirement of payment of a fee and from any provision in lieu of fee payment.

**R277-407-2. Authority and Purpose.**

A. This rule is authorized under Article X, Sections 2 and 3 of the Utah Constitution which vests general control and supervision of the public education system in the State Board of Education and provides that public elementary and secondary schools shall be free except that fees may be imposed in secondary schools if authorized by the Legislature. Section 53A-12-102(1) authorizes the State Board of Education to adopt rules regarding student fees. This rule is consistent with the State Board of Education document, Principles Governing School Fees, adopted by the State Board of Education on March 18, 1994. This rule is also consistent with the Permanent Injunction, Doe v. Utah State Board of Education, Civil No. 920903376.

B. The purpose of this rule is:

- (1) to permit the orderly establishment of a reasonable system of fees;
- (2) to provide adequate notice to students and families of fee and fee waiver requirements; and
- (3) to prohibit practices that would exclude those unable to pay from participation in school-sponsored activities.

**R277-407-3. Classes and Activities During the Regular School Day.**

A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or regular school day activity, including assemblies and field trips.

B. Textbook fees may only be charged in grades seven through twelve.

C. If a class is established or approved which requires payment of fees or purchase of materials, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the class shall be subject to the fee waiver provisions of R277-407-6.

D. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.

E. Schools shall provide school supplies for K-6 students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

F. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6.

**R277-407-4. School Activities Outside of the Regular School Day.**

A. Fees may be charged, subject to the provisions of Section R277-407-6, in connection with any school-sponsored activity which does not take place during the regular school day, regardless of the age or grade level of the student, if participation is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

B. Fees related to extracurricular activities may not exceed limits established by the LEA. Schools shall collect these fees consistent with LEA policies and state law.

**R277-407-5. General Provisions.**

A. No fee may be charged or assessed in connection with any class or school-sponsored or supported activity, including extracurricular activities, unless the fee has been set and approved by the LEA and distributed in an approved fee schedule or notice in accordance with this rule.

B. Fee schedules and policies for the entire LEA shall be adopted at least once each year by the LEA in a regularly scheduled public meeting of the LEA. Provision shall be made for broad public notice and participation in the development of fee schedules and waiver policies. Minutes of LEA meetings during which fee and waiver policies are developed or adopted, together with copies of approved policies, shall be kept on file by the LEA and made available upon request.

C. Each LEA shall adopt procedures to reasonably ensure that the parent or guardian of each child who attends school within the LEA receives written notice of all current and applicable fee schedules and fee waiver policies, including easily understandable procedures for obtaining waivers and for appealing a denial of waiver, as soon as possible prior to the time when fees become due. Copies of the schedules and waiver policies shall be included with all registration materials provided to potential or continuing students.

D. No present or former student may be denied receipt of transcripts or a diploma for failure to pay school fees. A reasonable charge may be made to cover the cost of duplicating or mailing transcripts and other school records. No charge may be made for duplicating or mailing copies of school records to an elementary or secondary school in which the student is enrolled or intends to enroll.

E. To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

F. Donations or contributions may be solicited and accepted in accordance with LEA policies, but all such requests must clearly state that donations and contributions are voluntary. A donation is a fee if a student is required to make a donation in order to participate in an activity.

G. In the collection of school fees, LEAs shall comply with statutes and State Tax Commission rules regarding the collection of state sales tax.

#### **R277-407-6. Waivers.**

A. An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

The LEA fee waiver policy shall include procedures to ensure that:

(1) at least one person at an appropriate administrative level is designated in each school to administer the policy and grant waivers;

(2) the process for obtaining waivers or pursuing alternatives is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and parents;

(3) students who have been granted waivers or provisions in lieu of fee waivers are not treated differently from other students or identified to persons who do not need to know;

(4) fee waivers or other provisions in lieu of fee waivers are available to any student whose parent is unable to pay the fee in question; fee waivers shall be verified by a school or LEA administrator consistent with requirements of Section 53A-12-103(5);

(5) the LEA requires documentation of fee waivers consistent with Section 53A-12-103(5);

(6) schools and the LEA submit fee waiver compliance forms consistent with Doe v. Utah State Board of Education, Civil No. 920903376 that affirm compliance with provisions of the Permanent Injunction and provisions of Section 53A-12-103(5);

(7) the LEA does not retain required fee waiver verification documentation for protection of privacy and confidentiality of family income records consistent with 53A-12-103(6);

(8) textbook fees are waived for all eligible students in accordance with Sections 53A-12-201 and 53A-12-204 of the Utah Code and this Section;

(9) parents are given the opportunity to review proposed alternatives to fee waivers;

(10) a timely appeal process is available, including the opportunity to appeal to the LEA or its designee;

(11) any requirement that a given student pay a fee is suspended during any period during which the student's eligibility for waiver is being determined or during which a denial of waiver is being appealed; and

(12) the LEA provides for balancing of financial inequities among schools so that the granting of waivers and provisions in lieu of fee waivers do not produce significant inequities through unequal impact on individual schools.

B. A student is eligible for fee waiver as follows:

(1) income verification consistent with Section 53A-11-103(5);

(2) the student receives (SSI) Supplemental Security

Income (ONLY THE STUDENT WHO RECEIVES THE SSI BENEFIT QUALIFIES FOR FEE WAIVERS);

(3) the family receives TANF (currently qualified for financial assistance or food stamps);

(4) the student is in foster care (under Utah or local government supervision);

(5) the student is in state custody.

C. In lieu of income verification, supporting documents shall be required for each special category of fee waiver-eligible students:

(1) For TANF, a letter of decision covering the period for which fee waiver is sought from Utah Department of Workforce Services;

(2) For SSI, a benefit verification letter from Social Security;

(3) For state custody or foster care, the youth in custody required intake form and school enrollment letter or both provided by the case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

D. CASE BY CASE DETERMINATIONS MAY BE MADE FOR THOSE WHO DO NOT QUALIFY UNDER ONE OF THE FOREGOING STANDARDS but who, because of extenuating circumstances such as, but not limited to, exceptional financial burdens such as loss or substantial reduction of income or extraordinary medical expenses, are not reasonably capable of paying the fee.

E. Expenditures for uniforms, costumes, clothing, and accessories (other than items of typical student dress) which are required for school attendance, participation in choirs, pep clubs, drill teams, athletic teams, bands, orchestras, and other student groups, and expenditures for student travel as part of a school team, student group, or other school-approved trip, are fees requiring approval of the LEA, and are subject to the provisions of this section, consistent with Doe v. Utah State Board of Education, Civil No. 920903376, p. 43.

#### **F. Student Records**

(1) An LEA or school may pursue reasonable methods to collect fees, but shall not exclude students from school or withhold official student records, including written or electronic grade reports, diploma, or transcripts, for fees owed.

(2) An LEA or school may withhold the official student records of a student responsible for lost or damaged school property consistent with Section 53A-11-806, but may not withhold a student's records that would prevent a student from attending school or being properly placed in school.

(3) Consistent with Section 53A-11-504, a school requested to forward a certified copy of a transferring student's record to a new school shall comply within 30 school days of the request.

G. Charges for class rings, letter jackets, school photos, school yearbooks, and similar articles not required for participation in a class or activity are not fees and are not subject to the waiver requirements.

#### **R277-407-7. Fee Waiver Reporting Requirements.**

Beginning with fiscal year 1990-91, each LEA shall attach to its annual S-3 statistical report for inclusion in the State Superintendent of Public Instruction's annual report the following:

(1) a summary of the number of students in the LEA given fee waivers, the number of students who worked in lieu of a waiver, and the total dollar value of student fees waived by the LEA;

(2) a copy of the LEA's fee and fee waiver policies;

(3) a copy of the LEA's fee schedule for students; and

(4) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(5) consistent fee waiver compliance forms provided by the Utah State Office of Education and required by Doe v. Utah

State Board of Education, Civil No. 920903376.

**KEY: education, school fees**

**July 11, 2011**

**Notice of Continuation September 6, 2007**

**Art X Sec 3**

**53A-12-102**

**53A-12-201**

**53A-12-204**

**53A-11-806(2)**

**Doe v. Utah State Board of Education, Civil No.  
920903376**

**R277. Education, Administration.****R277-459. Classroom Supplies Appropriation.****R277-459-1. Definitions.**

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

B. "Classroom teacher" definition criteria:

(1) Eligible teachers shall be in a permanent teacher position filled by one teacher or two or more job-sharing teachers employed by a school district, the Utah Schools for the Deaf and the Blind, or charter schools.

(2) Eligible teachers are licensed personnel, and paid on a school district's salary schedule or a charter school's salary schedule.

(3) Teachers shall be employed for an entire contract period.

(4) The teacher's primary responsibility shall be to provide instructional or a combination of instructional and counseling services to students in public schools.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information; and
- (6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

D. "Field trip" means a district, or school authorized excursion for educational purposes.

E. "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) The definition of teaching supplies and materials should be broadly construed in so far as the materials are used by the teacher for instructional purposes or to protect the health of teachers in instructional or lab settings, or in conjunction with field trips.

F. "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, or charter schools to classroom teachers for school materials, supplies, field trips, and purposes or equipment that protect the health of teachers in instructional or lab settings or in conjunction with field trips.

**R277-459-3. Distribution of Funds.**

A. The Board shall distribute funds to school districts, charter schools and the Utah Schools for the Deaf and the Blind

based on data submitted to the CACTUS database.

B. School districts, charter schools and the Utah Schools for the Deaf and the Blind shall distribute funds for classroom supplies consistent with the amounts for salary schedule steps and teaching assignments as appropriated.

C. Individual teachers shall designate the uses for their allocations consistent with the criteria of this rule. School districts/charter schools and other eligible schools may develop policies, procedures and timelines to facilitate the intent of the appropriation.

D. Each school district/charter school 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 eligible teachers the following year.

F. These funds shall supplement, not supplant, existing funds for identified purposes.

G. These funds shall be accounted for by the school district/charter school or eligible school using state and school district procurement and accounting policies.

H. The funds and supplies purchased with the funds are the property of the school district, the Utah Schools for the Deaf and the Blind, or charter schools.

(1) Employees do not personally own materials purchased with designated public funds.

(2) A school district or charter school may by policy allow individual teachers to use supply funds to protect teacher health with consumable materials that may not be able to be reused by the school.

**R277-459-4. Other Provisions.**

A. Districts, the Utah Schools for the Deaf and the Blind, or charter schools shall allow, but not require, teachers to jointly use their allocations.

B. School districts, the Utah Schools for the Deaf and the Blind, and charter schools may carry over these funds, if necessary.

**KEY: teachers, supplies**

**July 11, 2011**

**Notice of Continuation July 1, 2010**

**Art X Sec 3**

**53A-1-402(1)(b)**



**R277. Education, Administration.****R277-475. Patriotic, Civic and Character Education.****R277-475-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Character education" means reaffirming values and qualities of character which promote an upright and desirable citizenry.
- C. "Civic education" means the cultivation of informed, responsible participation in political life by competent citizens committed to the fundamental values and principles of representative democracy in Utah and the United States.
- D. "Patriotic" means having love of and dedication to one's country.
- E. "Patriotic education" means the educational and systematic process to help students identify, acquire, and act upon a dedication to one's country.

**R277-475-2. Authority and Purpose.**

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-13-101.6 which directs the Board to provide a rule for a program of instruction within the public schools relating to the flag of the United States, and by 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 standards for patriotic education programs in the public schools.

**R277-475-3. Patriotic Education.**

Patriotic education shall be included and primarily taught in the social studies curricula of kindergarten through grade twelve. All educators shall have responsibility for patriotic, civic and character education taught in an integrated school curriculum and in the regular course of school work.

**R277-475-4. Subject Matter.**

- A. Patriotic, civic and character education programs shall meet the requirements of Sections 53A-13-101.4, 53A-13-101.6, and 53A-13-109.
- B. Students shall be taught the history of the flag, etiquette, customs pertaining to the display and use of the flag, and other patriotic exercises as provided in Sections 36 U.S.C. 170 to 177.
- C. The school shall provide the setting and opportunities to teach by example and role modeling the following patriotic values associated with the flag of the United States:
  - (1) the history of the flag;
  - (2) etiquette surrounding the use of the flag;
  - (3) customs pertaining to the display and use of the flag;
  - (4) the Pledge of Allegiance;
  - (5) etiquette surrounding the Pledge of Allegiance;
  - (6) that each individual has the right to personal liberties associated with the flag so long as the rights of others are not violated; and
  - (7) that individuals shall have freedom to exercise their values as they relate to the flag of the United States consistent with the law.
- D. Instruction in United States history and government shall include:
  - (1) a study of forms of government including:
    - (a) a republic;
    - (b) a pure democracy;
    - (c) a monarchy; and
    - (d) an oligarchy.
  - (2) political philosophies and economic systems including:
    - (a) socialism;
    - (b) individualism; and
    - (c) free market capitalism.
  - (3) the United States' form of government, a compound

constitutional republic.

**R277-475-5. Methods.**

- A. Education about the flag and the Pledge of Allegiance to the Flag shall be taught and modeled following the plan of the social studies Core Curriculum in grades kindergarten through six.
- B. The Pledge of Allegiance to the Flag shall be recited by students at the beginning of the day in each elementary public school in the state.
- C. Local school boards are encouraged to provide for the reciting of the Pledge of Allegiance to the Flag at least once a week at the beginning of the school day in secondary schools.
- D. Students and parents shall be adequately notified of lawful exemptions to the requirement to participate in reciting the Pledge.
- E. A student shall be excused from reciting the Pledge upon written request to the school from the student's parent or legal guardian.
- F. Consistent with Section 53A-13-101.4(6), public schools shall display IN GOD WE TRUST, the national motto of the United States, in one or more prominent places in each school building.
- G. Civic and character education shall be achieved through an integrated school curriculum and in the regular course of school work.
- H. Instruction in United States history and government shall be taught consistent with the Utah social studies core curriculum.

**R277-475-6. Reporting Requirements.**

- A. The Board shall submit a report to the Education Interim Committee consistent with Section 53A-13-109(6).
- B. Each school district and the State Charter School Board shall submit a report to the Lieutenant Governor and the Commission on Civic and Character Education consistent with Section 53A-13-109(6).

**KEY: education, curricula, patriotic education, civic education, character education**

**July 11, 2011**

**Notice of Continuation July 1, 2010**

**Art X Sec 3  
53A-13-101.6  
53A-1-401(3)**

**R277. Education, Administration.****R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program.****R277-477-1. Definitions.**

A. "Board" means the Utah State Board of Education. The Board is the representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

B. "Fall Enrollment Report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

C. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

D. "Interest and Dividends Account" means an account created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year at which time the funds are distributed to school districts through the School LAND Trust Program.

E. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

F. "Most critical academic needs" for purposes of this rule means needs identified in the school improvement plan developed in accordance with Section 53A-1a-108.5.

G. "School Children's Trust Section" means employees designated by the Superintendent who have responsibility for overseeing the use of School LAND Trust Program funds.

H. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

I. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board and the board that has responsibility to approve School LAND Trust plans for charter schools. The SCSB has primary responsibility to provide training and oversight for charter school School LAND Trust plans.

J. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

K. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

L. "USDB" means the Utah Schools for the Deaf and the Blind.

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

**R277-477-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

(1) provide direction in the distribution of interest and dividends from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2) through school districts;

(2) provide for appropriate and adequate oversight of the

expenditure and use of School LAND Trust monies by designated local boards of education, the SCSB, and the Board;

(3) provide for:

(a) review and monitoring of funds and revenue generated by school trust lands;

(b) compliance by councils with requirements in statute and Board rule; and

(c) allocation of the monies as provided in Section 53A-16-101.5(3)(c) based on student count.

**R277-477-3. Distribution of Funds -- Determination of Proportionate Share.**

A. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

B. Each school district and the USOE, with regard to charter schools and the USDB, shall distribute funds received under R277-477-3A to each school within each school district or to each charter school and USDB on an equal per student basis.

C. Local boards of education and the USOE may adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

D. All public non-charter schools receiving funds shall have a school community council as required by Sections 53A-1a-108 and R277-491; funds shall be used to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5. Plans shall be approved by the local board of education. Required school community council-generated plans or programs include:

- (1) School Improvement Plan;
- (2) School LAND Trust Program;
- (3) Reading Achievement Plan (for elementary schools)
- (4) Professional Development Plan;
- (5) Child Access Routing Plan; and
- (6) Recommendations regarding school/school district programs and community environment.

E. All charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds, and a current school plan for enhancing or improving academic excellence consistent with Section 53A-16-101.5 approved by the SCSB for state chartered schools.

F. The plan shall be electronically submitted to the USOE on the School LAND Trust Program website.

G. All charter schools shall be considered collectively as a school district to receive a base amount under Section 53A-16-101.5(3)(a)(i).

H. The USDB shall receive the average statewide per pupil base amount as the school's base allocation.

I. In order to receive its allocation, a school shall satisfy the requirements of Section 53A-16-101.5(4-7).

J. Plans shall include specific academic goals, steps to meet those goals, measurements to assess improvement and specific expenditures to implement plans that may include purchase of workbooks, textbooks, professional development, computer hardware and software, library and media supplies, or supplement funding for aides, teachers and specialists, and other tools for student academic improvement consistent with Section 53A-16-101.5(5).

K. As part of the school plan submission:

(1) principals shall provide a signed assurance that the membership of the school community council and the process

used for election and appointment of members to the council was made consistent with 53A-1a-108 and 53A-16-101.5; and

(2) A record of the vote by the school community council when the school plan was approved including the date of the vote, voters for, against, and absent voters, consistent with 53A-16-101.5.

L. Income from the Interest and Dividends Account shall be distributed to school districts, USDB, and charter schools after the close of the state fiscal year as the USOE receives the funds in the Interest and Dividends Account within the Uniform School Fund.

M. If a school chooses not to apply for School LAND Trust Program funds and meet the requirements for receiving funds, the funds allocated for that school shall be retained at USOE and included with the statewide distribution for the following school year.

N. Local boards of education or the SCSB shall consider plans annually and may approve or disapprove a school plan. If a plan is not approved, the local board shall provide a written explanation of necessary amendments prior to resubmission of the plan consistent with Section 53A-16-101.5.

O. Local boards shall ensure timely distribution of the funds to schools with approved plans.

P. When approving school plans on the School LAND Trust Program website, school district and charter school personnel shall report the meeting date(s) when the local board of education or the SCSB approved the plans.

Q. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year. Schools shall provide an explanation for any carry over that exceeds one-tenth of the school's allocation in the school plan or report.

R. School LAND Trust Program funds shall be focused on the school's most critical academic needs.

S. School LAND Trust Program funds shall be focused on implementing a recommended course of action to enhance or improve student academic achievement and implement a component of the school improvement plan focused on the school's identified most critical academic needs, as explained in Section 53A-1a-108.5 and Section 53A-16-101.5(5).

T. Examples of successful programs using School LAND Trust Program monies include activities such as:

- (1) credit recovery courses and programs;
- (2) study skills classes;
- (3) college entrance exam preparation classes;
- (4) academic field trips;
- (5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps, books, or student planners;
- (6) teachers and teacher aides;
- (7) professional development directly tied to school academic goals;
- (8) student focused educational technology;
- (9) books and textbooks.

U. Examples of programs not eligible for funding using School LAND Trust Program monies include plans to improve school climate, provide security, address behavioral issues, prevent bullying, install permanent auditorium audio systems, and initiate or support other non-academic school needs.

V. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the student Individual Education Plans (IEPs).

W. The School Children's Trust Section of the USOE shall create and electronically post training and support materials for school community councils, charter school trust land committees and local school boards.

X. Funds from the School LAND Trust Program that are

expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477 or R277-491, or inconsistent with the school board/charter board approved plan may be reduced or eliminated by the Board in subsequent years until the misappropriated funds have been restored.

Y. The Board may recommend that School LAND Trust Program funds be reduced or eliminated if the school has failed to comply with Section 53A-1a-108 in the election or appointment of school community council members.

Z. Schools serving only youth in custody may form committees and submit plans to the district serving the students. Youth in custody schools shall receive the same per pupil distribution as other schools in the district providing services.

AA. Plans submitted by charter schools shall be prepared, submitted and approved by the charter school committee established in R277-470-11, requiring a majority of elected parents to serve on the committee, and then submitted first to the local charter school board, then to the local board of education for approval, if the school is chartered by the district, or to the SCSB if the school is chartered by the Board.

BB. Plans submitted by the USDB governing board shall be reviewed and approved by the State Superintendent or designee.

#### **R277-477-4. Administration of School LAND Trust Program.**

A. The School Children's Trust Section of the USOE shall provide support to local boards of education, to the SCSB and to local charter trust land committees, as directed by the Superintendent.

B. Support services shall include:

(1) Regional training and, as requested and to the extent of resources available, school district or school training for school community councils;

(2) Training materials to support school community councils in creating and reviewing school improvement plans, School LAND Trust plans, reading achievement plans, professional development plans, and child access routing plans for both elementary and secondary schools.

(3) Materials, suggested practices and plans for use by community councils and charter school trust land committees to:

(a) increase community and parent awareness and knowledge of community councils;

(b) increase community and parent knowledge about school trust lands and their history and purpose in generating funds for public schools;

(c) encourage parent participation in developing plans for local board approval for the use of School LAND Trust allotments.

C. The School Children's Trust Section shall monitor development of School LAND Trust plans and assist local community councils and charter school trust land committees with plan development as requested, and monitor expenditures and compliance with statutory requirements. Assistance/monitoring may include:

(1) timely notification of annual School LAND Trust allotments to public schools;

(2) clear and timely notification of required timelines for plan submission;

(3) periodic, cost-effective and scheduled review of submitted school plan consistency and plan expenditures and results;

(4) verifying web postings and other information regarding school community council and charter school trust land committees compliance with the Utah Public and Open Meetings Act.

D. The School Children's Trust Section shall receive direction from the Superintendent as it provides monitoring and review.

E. Monitoring and review shall be accomplished primarily through written/electronic assurances from school community councils and charter school trust land committees, written/electronic submission of information from local school boards and charter schools and random and selective compliance reviews of School LAND Trust expenditures, the execution of School LAND Trust plans, and other school community council requirements.

F. The School Children's Trust Section shall report annually to the Board on compliance review findings and other compliance issues. The Board shall make determinations regarding reduction or elimination of all or a portion of a school's School LAND Trust Program funding in subsequent years and make a report to the Public Education Appropriation Subcommittee.

G. The School Children's Trust Section shall, under the direction of the Superintendent, provide oversight and expertise regarding the School LAND Trust account and all related activities. Oversight and activities may include:

- (1) attending meetings where school trust land, permanent fund, and school community council issues are discussed and voted on;
- (2) providing information to federal, state and local government agencies, the general public, Congress, and the Legislature regarding school trust lands, the trust revenues and expenditure of revenues;
- (3) reviewing and providing information as representatives of the Superintendent to the Congress, Legislature, boards, state and federal agencies and employees that have responsibility for managing school trust lands, maximizing trust land revenues, and investing the permanent State School Fund prudently;
- (4) increase and strengthen beneficiary monitoring; and
- (5) other activities or assignments as directed by the Superintendent.

H. The president of each local board of education or of each local charter board shall ensure that the members of the board are provided with annual training on the requirements of the School LAND Trust Program. Notice of training shall be provided to the USOE School Children's Trust Section via email of board minutes identifying training information.

I. A local school board shall comply with Section 53A-1a-108(10) and provide required copies of the Utah Code to school community council members.

#### **R277-477-5. Information to USOE.**

A. Information on each school's plan to address most critical academic needs shall be completed via the School LAND Trust Program website maintained through the USOE for accurate and uniform reporting.

B. To facilitate submission of information by schools, each school board shall establish a timeline for timely submission of information and a district submission date for the district schools not later than May 15 of each year.

C. Timelines shall allow for school committee reconsideration and editing of the school plan following local board of education or SCSB requested changes.

D. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

E. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or SCSB approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

F. Charter school and school district business administrators shall enter financial data relating to the School LAND Trust Program on the School LAND Trust Program website at the time they prepare and submit Annual Program Report (APR) data to the USOE. The appropriate data shall appear in the final reports submitted online by school community councils for reporting to parents as required in Section 53A-1a-108.

G. The financial data shall include:

(1) the annual distribution received by each school (the sum of the distributions to schools within a school district equals the total distributed to the school district by the USOE);

(2) expenditures by category made by each school from revenues received from the School LAND Trust in the prior fiscal year.

H. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

I. The financial report in each school final report shall be consistent with the narrative submitted by that school community council or charter committee.

#### **KEY: schools, trust lands funds**

**July 11, 2011**

**Notice of Continuation November 10, 2010**

**Art X Sec 3  
53A-16-101.5(3)(c)  
53A-1-401(3)**

**R277. Education, Administration.****R277-480. Charter School Revolving Account.****R277-480-1. Definitions.**

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

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515, by the Board under Section 53A-1a-505, and by boards of trustees of higher education institutions under Section 53A-1a-501.3.

C. "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:

(1) meet school building construction and renovation needs; and

(2) pay for expenses related to the start up of a new charter school or the expansion of an existing charter schools.

D. "Charter School Revolving Account Committee" means the committee established by the Board under Section 53A-1a-522(6).

E. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

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

**R277-480-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-522(2)(b) which requires the Board to administer the Charter School Revolving Account, 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 establish procedures for administering the Charter School Revolving Account to determine membership of the Charter School Revolving Account Committee, and to determine loan amounts and loan repayment conditions.

**R277-480-3. Charter School Revolving Account Committee.**

A. The Board shall establish a Charter School Revolving Account Committee consistent with Section 53A-1a-522(6).

B. The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of Section 53A-1a-522(6)(b) for appointment by the Board consistent with timelines established by the Board.

C. The Board shall annually accept nominations of individuals provided by the State Charter School Board who meet the qualifications of 53A-1a-522(6)(b).

D. The Board may only select Charter School Revolving Account Committee members who satisfy conditions of Section 53A-1a-502(6).

E. Charter School Revolving Account Committee members appointed by the Board after May 1, 2010 shall be appointed for two year terms.

F. The USOE Charter School Director or designee shall be a non-voting Charter School Revolving Account Committee member.

**R277-480-4. Charter School Revolving Account Application and Conditions.**

A. The Charter School Revolving Account Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Section 53A-1a-522.

B. The Charter School Revolving Account Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful, including considerations of Section 53A-1a-522(5), in making final recommendations to the Superintendent, the State Charter School Board and the Board.

C. Applications for loans shall be accepted on an ongoing

basis, subject to eligibility criteria and availability of funds.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-1a-522 and the purpose of the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

D. The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53A-1a-522. Terms shall include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to \$150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to \$75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53A-1a-522 shall not exceed:

(a) \$1,000 per pupil based on prior year October 1 enrollment count for operational schools; or

(b) \$1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) \$300,000 of the total of all current loan awards by the Board to a charter school board.

**R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.**

A. The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

B. The submission of intentionally false, incomplete or inaccurate information from a loan applicant may result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

C. The Board staff and State Charter Board staff shall review recommendations from the Charter School Revolving Account Committee.

D. Final recommendations from the Charter School Revolving Account Committee shall be submitted to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

E. The Board may request additional information from

loan applicants or a reconsideration of a recommendation by the Charter School Revolving Account Committee.

F. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

**KEY: charter schools, revolving account  
July 11, 2011**

Art X, Sec 3  
53A-1a-522(2)(b)  
53A-1-401(3)

**R277. Education, Administration.****R277-484. Data Standards.****R277-484-1. Definitions.**

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

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

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators. The database includes information such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information;
- (6) completion of employee background checks; and
- (7) a record of disciplinary action taken against the educator.

E. "Data Clearinghouse File" means the electronic file of student level data submitted by LEAs to the USOE in the layout specified by the USOE. This definition is effective until July 1, 2011.

F. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2008-09 school year to submit data to the U.S. Department of Education.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "LEA" means local education agency, which may be either a public school district or a charter school.

J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

K. "MST" means Mountain Standard Time.

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

M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the USOE, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service. This definition becomes effective on July 1, 2011, the date when UTREx becomes available to all Utah LEAs.

N. "Year" means both the school year and the fiscal year for LEAs in Utah, which runs from July 1 through June 30.

O. "YICISIS" means the Youth In Custody Student Information System.

**R277-484-2. 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, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

**R277-484-3. Deadlines for Data Submission.**

For the purpose of submission of student level data, each Utah LEA shall participate in UTREx as of July 1, 2011. LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List - Business Services.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;

(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 7

(1) Data Clearinghouse File - final comprehensive update for prior year - Data, Assessment, and Accountability - effective until July 1, 2011;

(2) UTREx - final comprehensive update for prior year - Data, Assessment, and Accountability - effective on July 1, 2011.

E. July 15

(1) Adult Education - final report for prior year;

(2) Bus Driver Credentials Report - for current year - Business Services;

(3) Classified Personnel Report - for prior year - Business Services;

(4) Driver Education Report - for prior year - Educator Quality;

(5) ESEA Choice and Supplemental Services Report - for prior year;

(6) Fee Waivers Report - for prior year;

(7) Fire Drill Compliance Statement - for prior year;

(8) Home Schooled Students Report - for prior year;

(9) Teacher Benefits Report - for prior year;

(10) Pupil Transportation Statistics - for prior year:

(a) Bus Inventory Report;

(b) Year End Pupil Transportation Statistics Reports.

F. September 15

(1) Membership Audit Report - for prior year;

(2) Adult Education - Financial Audit for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;

(2) Annual Program Report (APR) - for prior year.

H. October 15

(1) Data Clearinghouse File - update as of October 1 for current year - effective until July 1, 2011;

(2) UTREx - update as of October 1 for current year - effective on July 1, 2011;

(3) YICISIS - update as of October 1 for current year.

I. November 1

(1) Enrollment and Transfer Student Documentation Audit Report - for current year;

(2) Immunization Status Report - for current year;

(3) Pupil Transportation Statistics for state funding:

(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;

(b) Schedule B (Miscellaneous Expenditure Report) - for prior year;

(4) Negotiations report - for current year.

J. November 15

(1) CACTUS - update for current year; and

(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report - for prior year.

L. December 15 - Data Clearinghouse File - update as of December 1 for current year - effective until July 1, 2011.

M. December 15 - UTREx - update as of December 1 for current year - effective on July 1, 2011.

**R277-484-4. Adjustments to Deadlines.**

A. Deadlines that fall on a weekend or state holiday in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance and Statistics at least 24 hours before the specified deadline in Section 3 and include:

- (1) The reason(s) why the extension is needed;
- (2) The signatures of the LEA business administrator and the district superintendent or charter school director; and
- (3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance and Statistics shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 8 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

- (1) June 29 CACTUS Update;
- (2) July 7 Final Data Clearinghouse File - final comprehensive update for prior year- Data, Assessment, and Accountability - effective until July 1, 2011;
- (3) July 7 UTREx - final comprehensive update for prior year - Data, Assessment, and Accountability - effective on July 1, 2011;
- (4) November 15 CACTUS - update for current year.

**R277-484-5. Official Data Source and Required LEA Compatibility.**

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

- (1) school performance reports required under Section 53A-3a-602.5;
- (2) determination of adequate yearly progress as required under the ESEA; and
- (3) submission of data files to the U.S. Department of Education via EDEN.

C. Prior to an LEA acquiring a student information system, replacing an existing student information system, or modifying data elements in an existing student information system, an LEA shall have USOE approval to ensure that the LEA's new or modified student information system maintains compatibility with UTREx.

D. No later than October 1, 2013, all public education LEAs shall begin submitting daily updates to the USOE Clearinghouse using all School Interoperability Framework

(SIF) objects defined in the UTREx Clearinghouse specification. Failure to do so shall be a violation of Board reporting rules.

E. All public high school transcripts requested by public education post-secondary schools shall be electronically submitted to those public education post-secondary schools if the post-secondary schools are capable of receiving transcripts through the electronic transcript service designated by the USOE. This process is mandatory for all public high schools after September 1, 2013.

**R277-484-6. Use of Data for Allocation of Funds.**

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

**R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.**

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within five working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

**R277-484-8. Financial Consequences of Failure to Submit Reports on Time.**

A. If an LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 4, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

**R277-484-9. Disclosure of Data for Research.**

A. The USOE may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) A reasonable method shall be used to qualify researchers or organizations to receive data, such as evidence



that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) A standardized, de-identified research data package shall be prepared each year by the USOE for qualified researchers to systematically protect individual student data.

(3) The USOE is not obligated to fill every data request and may develop procedures to determine which requests will be filled or to assign priorities to multiple requests. The USOE/Board understands that it will respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act.

(a) In filling data requests, higher priority shall be given to requests that will help improve instruction in Utah's public schools.

(b) In filling data requests, higher priority shall be given to requests from universities, colleges, schools, faculty, students and government entities residing in Utah.

(4) A fee may be charged to prepare data or to deliver data, particularly if the preparation requires original work. The USOE shall comply with Section 63G-2-203 in assessing fees.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to USOE at least 10 business days prior to the public release.

#### B. Student information

(1) Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99-31(a)(6), so that:

(a) the individual data is de-identified, meaning it is not possible to trace the data to an actual student.

(b) the recipient of student data shall agree to not report or publish data in a manner that discloses a student's identity. For example, reporting test scores for a race subgroup that has a count, also known as n-size, less than 10 could enable someone to identify the actual students and shall not be published.

#### C. Licensed educator information

(1) The USOE shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) Additional information/data may be released by the USOE consistent with the purposes of CACTUS, the confidentiality protections accepted by requester(s), and the benefit that the research may provide for public education in Utah, as determined by the USOE.

D. Recipients of USOE research data shall sign a USOE non-disclosure agreement if required by the USOE.

E. The Board or the USOE may commission research or may approve research requests.

F. The USOE may provide personally identifiable data about students or licensed educators consistent with state and federal law. Some data may be provided only if the researcher or contractor agrees to preserve the confidentiality of private and protected data.

**KEY: data standards, reports, deadlines, research data requests**

July 11, 2011

Notice of Continuation June 2, 2008

Art X Sec 3

53A-1-401(3)

53A-1-301(3)(d) and (e)

**R277. Education, Administration.****R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program.****R277-490-1. Definitions.**

A. "Arts equipment and supplies" means musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies. This list is not exhaustive.

B. "Arts program coordinators (coordinator)" means individuals, employed full-time, who are responsible to coordinate arts programs for the school district, charter school or consortium, inform arts teachers, organize arts professional development (including organizing arts local learning communities), oversee/guide/organize the gathering of assessment data, represent the school district, charter school or consortium arts program, and provide general leadership for arts education throughout the school district, charter school or consortium.

C. Beverley Taylor Sorenson Elementary Arts Learning Program model means a program with the following components:

(1) a qualified arts specialist to work side-by-side with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum; and

(2) weekly collaboration between the regular classroom teacher and arts specialist in planning arts integrated instruction, with regular 15-30 minute conferences.

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

E. "Full-time employee," for purposes of this rule, means an employee that works a schedule consistent with the full-time contract agreement of the school or school district, including evaluations and entitlement to employment benefits.

F. "Highly qualified school arts program specialist (arts specialist)" means:

(1) an educator with a current educator license and a Level 2 or K-12 specialist endorsement in the art form; or

(2) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form and who works with a mentor who holds an arts endorsement; or

(3) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre.

(4) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

G. "Independent evaluator," for purposes of this rule and program, means an evaluator selected jointly by the Board and the Utah Arts Council through the required procurement process. The evaluator shall have experience and expertise in education programs and in the arts.

H. "Matching funds," for purposes of this rule and program, means funds that equal the total grant amount received by a school district/charter school/consortium to fund a school district/charter school/consortium arts coordinator under Section 53A-17a-162(3)(c) and R277-490-5.

I. "Utah Arts Council" is a state and nationally funded government entity that assists with professional development and provides direct matching grants to nonprofit organizations across the state of Utah. The Utah Arts Council also conducts programs which provide outreach services (including financial assistance) to schools, local arts councils and organizations, community centers, performing groups, and individual artists.

**R277-490-2. 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 permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-162 which directs the Board to establish a grant program for school districts and charter schools to hire qualified, full-time arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

B. The purpose of this rule is:

(1) to implement the Beverley Taylor Sorenson Elementary Arts Learning Program model in public schools through school districts, charter schools and consortia that submit grants to hire highly qualified, full-time arts specialists;

(2) to distribute funds to arts specialists through school districts and charter schools to purchase supplies and equipment;

(3) to allow ten Utah school districts/consortia to hire arts coordinators;

(4) to establish partnerships within established networks with Utah higher education institutions to provide pre-service training, professional development, research and leadership for arts educators and arts education in Utah public schools; and

(5) appropriately monitor, evaluate and report programs and program results.

**R277-490-3. Arts Specialist Grant Program.**

A. School districts/charter schools or consortia of school districts or charter schools may submit grant requests consistent with time lines provided in this rule.

B. School district/charter school consortia:

(1) School districts/charter schools may form consortia to employ arts specialists if the combined total student number of the consortium is not less than 300 students.

(2) The school district/charter school shall develop its proposal consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model outlined under R277-490-1C.

(3) The school district/charter school grant shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of school districts or charter schools.

(4) The school district/charter schools grant shall explain a schedule for the specialist(s) to serve the group of schools within several school districts or charter schools similarly to an arts specialist in a single school.

(5) A consortium grant shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

C. Arts specialist grant requirements

(1) Grant programs shall be developed and submitted to the Board consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model described in R277-490-1C.

(2) Grant applications shall describe arts specialist recruitment efforts.

(3) Grant applications shall describe plans, including timelines, for:

(a) advertising for specialist(s);

(b) employing specialists, including criminal background checks, as required;

(c) a plan for working with specialists to institutionalize the arts program by encouraging and assisting arts specialists to acquire educator licenses or become relicensed;

(d) a plan for training specialists, providing support for specialists (including mentoring) and appropriate evaluation of specialists.

D. School districts/charter schools shall review grant

applications and forward approved applications to the USOE.

E. Arts specialist timelines

(1) Continuing Beverley Taylor Sorenson schools shall complete assurances as provided by the USOE and submit to school districts by May 1, annually.

(2) New Beverley Taylor Sorenson schools shall complete applications as provided by the USOE and submit to school districts by May 1 annually.

(3) School districts/charter schools shall submit completed applications requiring funding to the USOE by May 7 annually.

(4) The Board, after close consultation with the Utah Arts Council, shall designate schools/consortia for funding no later than June 1 annually.

F. Distribution of funds for arts specialists

(1) Continuing Beverley Taylor Sorenson school districts/charter schools shall submit complete information of salaries (including benefits) of all Beverley Taylor Sorenson specialists employed by the school district/charter school, as requested by the USOE.

(2) The USOE shall distribute funds to continuing Beverley Taylor Sorenson school districts/charter schools annually in equal amounts per program, consistent with Section 53A-17a-162(6) and (7).

(3) The USOE shall distribute funds designated in Section 53A-17a-162(7) to additional Beverley Taylor Sorenson school districts/charter schools.

**R277-490-4. Distribution of Funds for Arts Specialist Supplies.**

A. The Board shall distribute funds for arts specialist supplies to school districts/charter schools/consortia no later than July 1 annually.

B. School districts/charter schools shall distribute funds to participating schools as provided in the approved school district/school/consortia grant and consistent with school district/charter school procurement policies.

C. School districts/charter schools/consortia shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the school/consortium plan, this rule and the law.

D. Summary information about effective supplies and equipment shall be provided in the school/consortium evaluation of the program.

**R277-490-5. School Districts/Charter Schools/Consortia Employment of School District/Charter School/Consortia Arts Coordinators.**

A. School districts/charter schools/consortia may apply for funds to employ full-time arts coordinators in their school district/charter school/consortium.

B. Applicants shall explain how arts coordinators will be used consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model, what requirements arts coordinators must meet, and what training will be provided by whom.

C. Applicants shall provide documentation of committed matching funds that equal the request from the school district/charter school/consortium.

D. Preference shall be given to applicants that demonstrate in their proposed recruitment and use of coordinators diligent and creative efforts to employ arts coordinators who mirror the minority or unique populations that make up the schools in which coordinators will work.

E. The Board, following close consultation with the Utah Arts Council, shall select school districts/charter schools/consortia to receive funds under this section.

F. Funds shall be distributed to designated school districts/charter schools/consortia no later than July 1 annually.

**R277-490-6. Arts Program Partnership with Utah Institutions of Higher Education for Pre-service, Professional Development, Research, and Leadership Training.**

A. The Board shall work closely with the Utah Arts Council to identify interested Utah higher education institutions eligible, prepared and geographically and programmatically suited to work with identified arts specialists, arts coordinators and the schools and programs in which specialists/coordinators are employed.

B. The Board, in close partnership with the Utah Arts Council, shall determine funding and payment timelines to eligible Utah higher education institutions for designated services as appropriate and necessary.

**R277-490-7. Beverley Taylor Sorenson Elementary Arts Learning Program Evaluation and Reporting.**

A. The Board, in consultation with the Utah Arts Council, shall contract annually, beginning in May 2009, with an independent qualified evaluator through the state procurement process.

B. The Board and the Utah Arts Council shall jointly report annually to the Education Interim Committee as provided in Section 53A-17a-162(6).

**KEY: arts program, grants, public schools  
July 11, 2011**

**Art X Sec 3  
53A-1-401(3)  
53A-17a-162**

**R277. Education, Administration.****R277-495. Required Policies for Electronic Devices in Public Schools.****R277-495-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Electronic device" means a privately owned device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.
- C. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.
- D. "USOE" means the Utah State Office of Education.

**R277-495-2. 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, by 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-11-901(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools.
- B. The purpose of this rule is to direct all public school districts or public schools, including charter schools, to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices while on public school premises.

**R277-495-3. Local Board and Charter School Responsibilities.**

- A. Local boards of education and local charter governing boards shall establish a timeline that requires all schools under their supervision have a policy governing the use of electronic devices in schools approved by local boards, effective and posted for students, employees, parents and community member access no later than April 1, 2009.
- B. Local boards and charter governing boards shall encourage schools to involve teachers, parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.
- C. Local boards and charter governing boards shall provide copies of their policies or clear electronic links to policies.
- D. School districts and schools within school districts shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.

**R277-495-4. Policy Requirements.**

- A. Local policies shall include the following:
- (1) scope of coverage of the policy, including clear rules for school premises, school hours, school activities, after school activities, school sponsored activities at remote sites, vehicles transporting students to and from school activities.
  - (2) definitions of devices covered by policy;
  - (3) prohibitions against use of electronic devices during Utah Performance Assessment System for Students (U-PASS) assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;
  - (4) clear information about restrictions, if any, on when or where possession of electronic devices, active or deactivated, are strictly prohibited or allowed, such as the use of an electronic calculator by a student consistent with a current and valid IEP, as determined by the school district/school;
  - (5) prohibitions on the use of electronic devices in a way that bullies, humiliates, harasses, or intimidates school-related individuals, including students, employees, and invitees, consistent with R277-609 and R277-613, or violates local, state,

or federal laws; and

- (6) procedures, if any, and due process, for the confiscation and recovery of electronic devices used in violation of local policies.
- B. Local policies may also include the following:
- (1) prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;
  - (2) procedures to report the misuse of electronic devices;
  - (3) potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;
  - (4) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any;
  - (5) strategies for use of technology that enhance instruction; and
  - (6) directives, protections, and requirements, if any, for school employees or invitees, or both.
- C. The USOE shall receive an annual assurance from the school district or charter school governing board as required under R277-108 that the local board has presented and implemented an electronic device policy consistent with the timelines and provisions of this rule.
- D. School districts or traditional school and charter schools shall post their duly enacted electronic device policies on their district or school websites.

**R277-495-5. USOE Responsibilities.**

- A. The USOE shall provide resources, upon request, for school districts and schools as they develop electronic device policies, including sources for successful policies, assistance with reviewing draft policies, and information about bullying, harassing, and discrimination via electronic devices consistent with R277-609 and R277-613.
- B. The USOE shall develop a model policy or a policy framework to assist school districts and individual schools in developing and implementing their policies.
- C. The USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.
- D. The USOE shall ensure that parents and school employees are involved in the development and implementation of policies.
- E. The USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.

**KEY: electronic devices, policy  
July 11, 2011**

**Art X Sec 3  
53A-1-401(3)  
53A-11-901(2)(c)(I)**

**R277. Education, Administration.****R277-500. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks (Effective Beginning July 1, 2012).****R277-500-1. Definitions.**

A. "Acceptable alternative professional development activities" means activities that may not fall within a specific category under R277-500-5 but are consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE) or the Teacher Education Accreditation Council (TEAC).

C. "Accredited school," for purposes of this rule, means a public or private school that has met standards considered to be essential for the operation of a quality school program and has received formal approval by the Northwest Accreditation Commission.

D. "Active educator," for purposes of this rule, means an individual holding a valid license issued by the Board who is employed by a Utah public LEA, accredited private school, or USOE, or who was employed by a Utah public LEA or accredited private school in a role covered by the license for at least three years in the individual's renewal period.

E. "Active educator license" means a license that is currently valid for employment in a position requiring an educator license.

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

G. "College/university course" means a course taken through an institution approved under Section 53A-6-108.

H. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better in approved university or university level course work or USOE professional development credit.

I. "Documentation of professional development activities" means:

(1) an original student transcript of university/college courses;

(2) a LEA or USOE-sponsored electronic record of professional development activities;

(3) summary, explanation, or copy of the product of a professional development activity signed by the educator's supervisor or a licensed administrator;

(4) certificate of completion for an approved professional development conference, workshop, institute, symposium, educational travel experience or staff development;

(5) an agenda or conference program demonstrating sessions and duration of professional development activities.

J. "Educational research" means conducting research on education issues or investigating education innovations.

K. "Inactive educator" means an individual holding a valid license issued by the Board who is not currently employed by a Utah public LEA or accredited private school or who was employed by a Utah public LEA or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

L. "Inactive educator license" means a license issued by the Board, other than a suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

M. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has also met all ancillary requirements established by law or rule.

N. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for

teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

O. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

P. "License" means an authorization which permits the holder to serve in a professional capacity in a public LEA or accredited private school.

Q. "Licensed administrator" means an individual holding an active educator license that is valid for employment in a public school administrative position.

R. "License renewal points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

S. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

T. "Professional development" means engaging in activities that improve or enhance an educator's practice.

U. "Professional growth plan" means a document prepared by a Utah educator consistent with this rule.

V. "University level course" means a course having the same academic rigor and requirements similar to a university/college course and taught by appropriately trained individuals. The final determination of a university level course is made by the USOE.

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

X. "USOE professional development credit" means courses, approved by the USOE under R277-519-3, in which educators may participate to renew a license, teach in another subject area, or teach at another grade level.

Y. "UPPAC" means the Utah Professional Practices Advisory Commission under Section 53A-6-301 through 307.

Z. "Verification of employment" means official documentation of employment as an educator listing the educator's assignment and years of service, signed by the supervising administrator.

**R277-500-2. 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-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional growth plan, and documentation of activities consistent with Title 53A, Chapter 6.

**R277-500-3. Educator License Renewal Requirements.**

A. Professional Growth Plan for Active Educators

(1) An active educator, in collaboration with his supervisor, shall develop and maintain a professional growth plan.

(2) The professional growth plan shall outline the professional development activities in which the educator will participate during the educator's current license renewal cycle;

(3) The professional growth plan shall be developed by taking into account:

(a) the educator's professional goals;

(b) curriculum relevant to the educator's current or anticipated assignment;

(c) goals and priorities of the LEA and school;

(d) available student data relevant to the educator's current or anticipated assignment;

(e) the requirements under R277-522 if the educator is a Level 1 licensed educator.

(4) The professional growth plan shall be reviewed and signed annually by the educator and supervisor and may be adjusted as appropriate.

(5) The educator is responsible for creation of the professional growth plan in collaboration with the designated supervisor.

(6) The educator is responsible for maintaining documentation associated with the plan and the annual review of the plan.

(7) The LEA may create tools or policies or both to assist educators in meeting this responsibility.

B. Professional Growth Plan for Inactive Educators

(1) All inactive educators intending to renew an educator license shall, in collaboration with a licensed administrator, develop and maintain a professional growth plan.

(2) The professional growth plan shall outline the professional development activities in which the educator will participate during the educator's current license renewal cycle.

(3) The plan shall take into account:

(a) the educator's professional goals;

(b) current license areas of concentration and endorsements;

(c) current trends relevant to the educator's current license areas of concentration and endorsements;

(d) the Utah Core Curriculum relevant to the educator's current license areas of concentration and endorsements;

(4) The professional growth plan shall be reviewed and signed by the educator and a licensed administrator at the beginning of the plan and again at the completion of the plan.

(5) The educator is responsible for developing the professional growth plan and maintaining documentation of the plan.

C. License Renewal Points

(1) To be valid for renewal, the professional growth plan shall document that the educator has earned the appropriate number of license renewal points as defined in R277-500-3.

(2) License holders may accrue license renewal points beginning with the date of each new license renewal.

(3) A Level 1 license holder shall earn at least 100 license renewal points in each three year period. A Level 1 license may only be renewed consistent with R277-504-3(D).

(4) A Level 2 license holder shall earn at least 200 license renewal points in each 5 year period.

(5) A Level 3 license holder shall earn at least 200 license renewal points in each 7 year period.

D. Documentation

(1) Each Utah license holder shall be responsible for maintaining documentation supporting completion of the professional growth plan.

(2) It is the educator's responsibility to retain documentation of professional development activities with appropriate signatures.

(3) All documentation relevant to the professional growth plan shall be retained by the educator for a minimum of two years from the designated renewal date.

E. Fingerprint Background Check and Educator Ethics Review

(1) A fingerprint background check shall be required for the renewal of any Utah educator license beginning July 1, 2009 consistent with Section 53A-6-401.

(2) No license may be renewed until the completion of the background check and receipt and review of the report by the USOE.

(3) The background check shall be completed within one calendar year prior to the date of license renewal.

(4) If an educator license holder's fingerprint background check is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the educator license holder's CACTUS file will direct the reviewer of the file to the USOE for further information. An educator license cannot be renewed until the background check process is complete.

(5) Completion of the USOE Educator Ethics Review shall be required for the renewal of a Utah educator license beginning January 1, 2011.

(6) No license may be renewed prior to the completion of the USOE Educator Ethics Review.

(7) The Ethics Review shall be completed within one calendar year prior to license renewal.

**R277-500-4. Educator License Renewal Procedures.**

A. An active educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional growth plan between January 1 and June 30 of the educator's assigned renewal year.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal provided by USOE at [www.utah.gov/teachers](http://www.utah.gov/teachers).

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Growth Plan Completion Form to the USOE. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines in this rule shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

B. An inactive educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional growth plan within one calendar year prior to the date on which the inactive educator license holder is directed/scheduled to renew the license.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal process provided by USOE at [www.utah.gov/teachers](http://www.utah.gov/teachers).

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Growth Plan Completion Form to the USOE. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines shall result in beginning anew the licensure process, including all attendant fees and criminal background checks.

C. Educators seeking renewal from an inactive status or requesting level changes shall be charged a fee set by the USOE. Educators with active licenses shall be charged a renewal fee consistent with R277-502

D. The USOE shall audit a random sample of

approximately ten percent of the annual online renewals. Educators selected for audit:

(1) shall submit the Professional Growth Plan Completion Form with the appropriate signatures to the USOE in a timely manner.

(2) shall receive a warning letter and may be referred to UPPAC if documentation is not submitted as requested.

(3) shall be referred to UPPAC for possible license discipline if the documentation reveals fraudulent or unprofessional actions.

E. The USOE may, at its own discretion, review or audit renewal transactions including the professional growth plan, signatures, and documentation of professional development activities.

#### **R277-500-5. Categories of Acceptable Activities for License Renewal.**

A. Active educators may earn licensure renewal points based on their employment in a position requiring a Utah educator license during their license cycle.

(1) Only years of employment with satisfactory performance evaluations may be counted for license renewal points.

(2) A Level 1 license holder may earn 25 license renewal points per year of employment to a maximum of 50 points per license cycle.

(3) A Level 2 or 3 license holder may earn 35 license renewal points per year of employment to a maximum of 105 points per license cycle.

B. A college/university course:

(1) shall be successfully completed with a C or better, or a pass.

(2) Each semester hour, as recorded on an official transcript, equals 18 license renewal points.

C. USOE professional development credit:

(1) shall be State-approved under R277-519-3;

(2) shall be successfully completed through attendance and required project(s).

(3) Each semester credit hour equals 15 license renewal points.

(4) Approval may be requested from the USOE by:

(a) a written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist; or

(b) a request submitted through the USOE-sponsored online professional development tracking system.

(5) Approval shall be requested from the USOE at least four weeks prior to the beginning date of the scheduled professional development and may be denied if not approved in advance.

D. LEA-sponsored or approved professional development activities:

(1) shall be approved by the LEA at least four weeks prior to the scheduled activity;

(2) may include LEA or school based professional development such as:

(a) participating in professional learning communities;

(b) development of LEA or school curriculum;

(c) planning and implementation of a school improvement plan;

(d) mentoring a Level 1 teacher;

(e) engaging in instructional coaching;

(f) conducting action research;

(g) studying student work with colleagues to inform instruction.

(3) Each clock hour of scheduled professional development activity time equals one license renewal point, not to exceed 25 points per activity per year.

E. Acceptable alternative professional development

activities:

(1) Acceptable activities are those that enhance or improve education, yet may not fall into a specific category.

(2) These activities shall be approved by the educator's supervisor, by a licensed administrator if the educator is an inactive educator, or with prior written approval by the USOE.

(3) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

F. Conferences, workshops, institutes, symposia, or staff-development programs:

(1) Acceptable workshops and programs shall be approved by the educator's supervisor, by a licensed administrator if the educator is an inactive educator, or with prior written approval by the USOE.

(2) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

G. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) Each Board-approved test score report submitted, with a passing score, equals 25 license renewal points.

(3) Each test must be related to the educator's current or potential license area(s) or endorsement(s).

(4) No more than two test score reports may be submitted in a license cycle.

H. Utah university sponsored cooperating teachers:

(1) An educator working as a cooperating teacher with one or more student teachers may earn license renewal points.

(2) Each clock hour spent supervising, collaborating with, and mentoring assigned student teachers equals one license renewal point not to exceed 25 points per license renewal cycle.

I. Service in a leadership role in a national, state-wide, or LEA-recognized professional education organization:

(1) Acceptable service shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) Each clock hour of participation equals one license renewal point, not to exceed 10 points per year.

J. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) The research activity shall be consistent with school and LEA policy.

(3) Each clock hour of participation equals one license renewal point, not to exceed 35 points per activity.

K. Substituting in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional development activity only for inactive educators paid and authorized as substitutes.

(2) Two hours of documented substitute time equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of employment, and signed by the supervising administrator.

L. Paraprofessional or volunteer service in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional development activity only for inactive educators.

(2) Three hours of documented paraprofessional or volunteer service equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of service, and signed by the supervising administrator.

M. Credit for LEA lane change or other purposes is determined by the LEA and is awarded at the LEA's discretion.

USOE professional development credit should not be assumed to be credit for LEA purposes, such as salary or lane change credit.

**R277-500-6. Board Directive to Educator License Holders for Fingerprint Background Check.**

A. The USOE may direct a Utah educator license holder to have a criminal fingerprint background check under Section 53A-6-401 for good cause shown.

B. If an educator license holder fails to comply with the directive in a reasonable time, following reasonable notice, and adequate due process, the educator license holder's license may be put into a pending status in the educator's CACTUS file subject to the educator license holder's compliance with the directive.

C. The Board or its designee may review an educator license holder's compliance with the directive prior to the final decision about the educator license holder's license status.

D. The provisions and requirements of this rule shall apply to educators seeking licensure renewal beginning July 1, 2012.

**R277-500-7. Exceptions or Waivers to this Rule.**

A. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

B. Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

C. Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

D. Approval or disapproval of the request shall be made in a timely manner and is not subject to administrative appeal.

**R277-500-8. Rule Effective Date.**

A. R277-500 will be effective beginning July 1, 2012.

B. R277-500 will replace R277-501 on July 1, 2012.

**KEY: educator license renewal, professional development, fingerprint background check  
July 11, 2011**

**53A-6-104  
53A-1-401(3)**



**R277. Education, Administration.****R277-501. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks (Effective Through June 30, 2012).****R277-501-1. Definitions.**

A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1N.

C. "Accredited school" for purposes of this rule means a public or private school that has met standards considered to be essential for the operation of a quality school program and has had formal approval by the Northwest Accreditation Commission.

D. "Active educator" for purposes of this rule means an individual holding a valid license issued by the Board who is employed by a Utah public or accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle in a Utah public or accredited private school.

E. "Active educator license" means a license that is currently valid for service in a position requiring a license.

F. "Approved professional development" means training or courses, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.

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

H. "College/university course" means a course taken through an institution approved under Section 53A-6-108. "University level course" means a course having the same academic rigor and requirements similar to a university/college course and taught by appropriately trained individuals.

I. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better.

J. "Documentation of professional development activities" means:

(1) an original report card or student transcript for university/college courses;

(2) certificate of completion for an approved professional development, conference, workshop, institute, symposium, educational travel experience and staff development;

(3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, and certificates shall be maintained by the educator;

(4) an agenda or conference program demonstrating sessions and duration of professional development activities.

K. "Educational research" means conducting educational research or investigating education innovations.

L. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a Utah public or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

M. "Inactive educator license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

N. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to

applicants who have also met all ancillary requirements established by law or rule.

O. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period in a Utah public or accredited private school; and

(3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

P. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system.

Q. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a Utah school.

R. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification. NASDTEC maintains an Educator Information Clearinghouse for its members regarding persons whose licenses have been suspended or revoked.

S. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

T. "No Child Left Behind (NCLB) standards for highly qualified teachers" means that all teachers of Core academic subjects as defined under R277-510-1B, demonstrate adequate content knowledge of their teaching assignments as of July 1, 2006.

U. "Professional colleague" for purposes of this rule means a Utah Level 2 or 3 licensed educator who has adequate familiarity with the inactive educator's license area of concentration and endorsement(s).

V. "Professional development plan" means a document prepared by the educator consistent with this rule.

W. "Professional development points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

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

Y. "Verification of employment" means official documentation of employment as an educator.

**R277-501-2. 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-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

**R277-501-3. Categories of Acceptable Activities for a Licensed Educator.**

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

- (2) Each semester hour equals 18 license points; or
- (3) Each quarter hour equals 12 license points.
- B. Professional development:
  - (1) shall be state-approved under R277-519-3.
  - (2) may be requested from the USOE by:
    - (a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled professional development, or
    - (b) a request submitted through the computerized professional development program connected to the USOE licensure system.
      - (i) The computerized process is available in most Utah school districts and area technology centers.
      - (ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled professional development.
  - (3) Each clock hour of authorized professional development time equals one professional development point.
  - (4) The professional development shall be successfully completed through attendance and required project(s).
- C. Conferences, workshops, institutes, symposia, educational travel experience or staff-development programs:
  - (1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.
  - (2) One license point is awarded for each clock hour of educational participation; license points may be limited to specific educational activities under R277-501-3C.
- D. Content and pedagogy testing:
  - (1) Acceptable tests include those approved by the Board.
  - (2) 25 license points shall be awarded for each Board-approved test score report submitted.
  - (3) No more than two test score reports may be submitted in a license cycle for a maximum of 50 points.
  - (4) Each score report submitted shall have a different test number and title.
  - (5) The license renewal applicant is responsible for reporting of score test results. This information should be used by renewal applicants to design ongoing professional development.
- E. Service in professional activities in an educational institution:
  - (1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.
  - (2) One license point is awarded for each clock hour of participation.
  - (3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.
- F. Service in a leadership role in a national, state-wide or district recognized professional education organization:
  - (1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.
  - (2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.
- G. Educational research and innovation that results in a final, demonstrable product:
  - (1) Acceptable activities include conducting educational research or investigating educational innovations.
  - (2) This research activity shall follow school and district policy.
  - (3) An inactive educator may conduct research and receive professional development points on programs or issues approved by a practicing administrator.
  - (4) One license point is awarded for each clock hour of

participation.

H. Acceptable alternative professional development activities:

(1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.

(2) These activities shall be approved by an educator's principal/supervisor or in the case of the inactive educator, a professional colleague, or a USOE or Utah school district specialist.

(3) One license point is awarded for each clock hour of participation.

I. Substituting in a Utah public or accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501-1D and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle as a substitute.

J. A license-holder who instructs students in a professional or volunteer capacity in a Utah public or accredited private school may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle. Paraprofessionals/volunteers may accrue one professional development point for every three hours of paraprofessional/volunteer service, as determined and verified by the building principal or supervisor.

K. Up to 50 license points may be earned in any one or any combination of categories E, F and G above.

#### **R277-501-4. Required Renewal License Points for Designated License Holders.**

A. Level 1, 2 and 3 license holders may accrue relicensure points beginning with the date of each new license renewal.

B. Level 1 license holder with no licensed educator experience.

(1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.

C. Level 1 license holder with one year licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 75 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

D. Level 1 license holder with two years licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 50 license points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

E. Level 1 license holder with three years licensed educator experience in a Utah public or accredited private school within a three year period.

(1) An active educator shall earn at least 25 professional development points in each three year period; and

(2) Any years taught shall have satisfactory evaluation(s).

F. An educator seeking a Level 2 license shall notify the USOE of completion of Level 2 license prerequisites consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers and R277-502, Educator Licensing and Data Retention.

G. Level 2 license holder:

(1) An active educator shall earn at least 95 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.

(2) An inactive educator shall earn at least 200 license

points within a five year period to maintain an active educator license.

(3) An inactive educator who works one year in a Utah public or accredited private school within a five year period shall earn 165 license points within a five year period to maintain an active educator license.

(4) An inactive educator who works two years in a Utah public or accredited private school within a five year period shall earn 130 license points within a five year period to maintain an active educator license.

(5) Credit for any year(s) taught requires satisfactory evaluation(s).

H. Level 3 license holder:

(1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.

(2) A Level 3 license holder with a doctorate degree from a regionally accredited college or university in education or in a field related to a content area in a unit of the public education system and shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.

(3) An educator seeking a Level 3 license shall notify the USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

I. Teachers seeking license renewal who do not meet NCLB standards for highly qualified teachers under R277-510 shall focus 95 of the 200 required professional development points in teaching assignments in which the teacher does not hold an appropriate major, major equivalent, or other NCLB highly qualified criteria.

#### **R277-501-5. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.**

A. A Level 2 active educator whose license expires June 30 shall earn 95 license points during the educator's five year renewal period and shall provide verification of employment.

B. A Level 2 inactive educator whose license expires June 30 shall earn 200 license points during the educator's five year renewal period.

#### **R277-501-6. Background Checks Required for Renewal.**

A. A background check shall be required for the renewal of any Utah educator license beginning July 1, 2009 consistent with Section 53A-6-401. No license may be renewed until the completion of the background check and receipt and review of the report by the USOE.

B. Beginning no later than July 1, 2009, applicants for Utah educator license renewal shall submit fingerprints to the Utah Department of Public Safety consistent with procedures and scheduling developed and disseminated by the USOE in consultation with the Utah Department of Public Safety.

C. No later than July 1, 2009, the USOE shall provide to the Utah Department of Public Safety a list of licensed Utah educators including dates of birth, social security numbers, and other necessary demographic information to be determined between the USOE and the Utah Department of Public Safety.

D. If an educator license holder's criminal background check is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the educator license holder's license shall be in a pending status until the process is concluded. The educator license holder's CACTUS file will show a dialog box directing the reviewer of the file to the USOE for further information. An educator license in a pending status cannot be renewed until the background check process is

complete.

#### **R277-501-7. Board Directive to Educator License Holders for Fingerprint Background Check.**

A. The USOE may direct a Utah educator license holder to have a criminal fingerprint background check under Section 53A-6-104 for good cause shown.

B. If an educator license holder fails to comply with the directive in a reasonable time, following reasonable notice and adequate due process, the educator license holder's license may be put into a pending status subject to the educator license holder's compliance with the Board's directive.

C. The Board or its designee may review an educator license holder's compliance with the directive prior to the final decision about the educator license holder's license status.

#### **R277-501-8. Miscellaneous Renewal Information.**

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment,

(2) shall take into account the goals and priorities of the school/district,

(3) shall be consistent with federal and state laws and district policies, and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor or a professional colleague designated by the building administrator.

B. If an educator is not employed in a Utah public or accredited private school at the renewal date, the educator shall review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form. The verification form signed by the professional colleague shall be provided to the USOE between January 1 and June 30 of the renewal year.

C. Each Utah license holder shall be responsible for maintaining a professional development plan.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development documentation shall be retained by the educator for a minimum of two renewal cycles.

D. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84114-4200 between January 1 and June 30 of the educator's assigned renewal year.

(1) Forms submitted by mail that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may, at its own discretion, review or audit verification for license renewal forms or educator license renewal folders or records.

E. License holders may begin to acquire professional development points under this rule on the date identified on the license as the date of licensure.

F. This rule does not explain criteria or provide credit standards for state approved professional development programs. That information is provided in R277-519.

G. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development points should not be assumed to be credit for school district purposes, such as salary or lane change credit.

H. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make

level changes. Educators with active licenses shall be charged a renewal fee consistent with R277-502.

I. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

(3) Approval or disapproval shall be made in a timely manner.

J. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.

(1) Specialists shall be considered licensed as of September 15, 1999 or at their official employment date, whichever is later.

(2) All specialists shall be considered Level 1, 2 or 3 license holders consistent with R277-521-3, 4 and 5.

(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.

K. Consistent with Section 53A-6-104(2) and (4), an educator may comply with the professional development requirements of this rule by:

(1) satisfactory completion of the educator's employing school district's district-specific professional development plan; and

(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and

(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.

L. Completion of relicensure requirements by an educator under R277-501-4 or R277-501-6K, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.

M. Educators are individually responsible for tracking their renewal cycles and completing professional development in a timely manner.

**R277-501-9. Rule Effective Date.**

A. R277-501 will be effective through June 30, 2012.

B. R277-500 will replace R277-501 on July 1, 2012.

**KEY: educational program evaluations, educator license renewal**

**July 11, 2011**

**Notice of Continuation February 18, 2010**

**Art X Sec 3**

**53A-6-104**

**53A-1-401(3)**

**R277. Education, Administration.****R277-609. Standards for School District, School and Charter School Discipline Plans.****R277-609-1. Definitions.**

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

B. "Bullying" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(2) is done for the purpose of placing a school employee or student in fear of:

(a) physical harm to the school employee or student; or

(b) harm to property of the school employee or student.

(3) The conduct described in R277-609-1B constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

C. "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

D. "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.

E. "Disruptive student behavior" includes:

(1) the grounds for suspension or expulsion described in Section 53A-11-904; and

(2) the conduct described in Section 53A-11-908(2)(b).

F. "Harassment" means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

G. "Hazing" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(f)(i) is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event; or

(ii) if the person committing the act against a school

employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

(2) The conduct described in R277-609-1G constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

H. "Plan" means a school district-wide and school-wide written model for prevention and intervention for student behavior management and discipline procedures for students who habitually disrupt school environments and processes.

I. "Policy" means standards and procedures that include the provisions of Section 53A-11-901 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that defines hazing, bullying, cyber-bullying, and harassment, prohibits hazing and bullying, requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, and harassment among school employees and students, and provides for enforcement through employment action or student discipline.

J. "Retaliate or retaliation" means an act or communication intended:

(1) as retribution against a person for reporting bullying or hazing; or

(2) to improperly influence the investigation of, or the response to, a report of bullying or hazing.

K. "Qualifying minor" means a school-age minor who:

(1) is at least nine years old; or

(2) turns nine years old at any time during the school year.

L. "School" means any public elementary or secondary school or charter school.

M. "School board" means:

(1) a local school board; or

(2) a local charter board.

N. "School employee" means:

(1) school teachers;

(2) school staff;

(3) school administrators; and

(4) all others employed, directly or indirectly, by the school, school board, or school district.

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

**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, Section 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control, Section 53A-15-603 which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction, and Section 53A-11-901 which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

B. The purpose of this rule is to define hazing, bullying, cyber-bullying, and harassment and outline requirements for school discipline plans and policies which school districts and charter schools shall meet.

**R277-609-3. School District, School and Charter School Responsibility to Develop Plans.**

A. Each school district, or school and each charter school shall develop and implement a board approved comprehensive school district, school or charter school plan or policy for

student and classroom management, and school discipline. The plan shall include:

- (1) the definitions of Section 53A-11-910;
- (2) written standards for student behavior expectations, including school and classroom management;
- (3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;
- (4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;
- (5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;
- (6) an ongoing staff development program related to development of student behavior expectations, effective instructional practices for teaching and reinforcing behavior expectations, effective intervention strategies, and effective strategies for evaluation of the efficiency and effectiveness of interventions;
- (7) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;
- (8) policies to define, prohibit, and intervene in bullying, including cyber-bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students, parents, and school staff. The policies shall:
  - (a) provide for 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 for 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 and education specific to bullying based upon students':
    - (i) actual or perceived identities;
    - (ii) conformance or failure to conform with stereotypes.
  - (d) provide for 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;
  - (e) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;
  - (f) complement existing safe and drug free school policies and school harassment and hazing policies;
  - (g) include required strong responsive action against retaliation including assistance to harassed students and their parents in reporting subsequent problems and new incidents; and
  - (h) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training.

B. The plan shall also provide direction to school districts for dealing with disruptive students. This part of the plan shall:

- (1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;
- (2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior; and
- (3) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court.

C. School district or school plans or sections of plans, including directives about bullying and disruptive students, shall

also:

- (1) include strategies to provide for necessary adult supervision;
- (2) be clearly written and consistently enforced; and
- (3) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

D. Plans required under R277-609-3 shall include gang prevention and intervention policies.

(1) The required plans shall account for an individual school or school district's unique needs or circumstances.

(2) The required plans may include the provisions of Section 53A-15-603(2).

(3) The required plans may provide for publication of notice to parents and school employees of policies by reasonable means.

#### **R277-609-4. Implementation.**

A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.

B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or charter school shall provide a formal written assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.

D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

#### **R277-609-5. Parent/Guardian Notification and Court Referral.**

A. Through school administrative and juvenile court referral consequences, school district, and school and charter school policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. Policies shall provide for notice to parents and information about resources available to assist parents in resolving school-age minors' disruptive behavior.

C. Policies shall provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

- (1) numbers of disruptions and timelines in accordance with Section 53A-11-910;
- (2) school resources available; and
- (3) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data.

D. Policies shall provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

#### **R277-609-6. USOE Model Policies.**

The USOE shall develop, review regularly, and provide to

local school boards and charter school governing boards model policies to address disruptive student behavior and appropriate consequences.

**KEY: disciplinary actions, disruptive students**

July 11, 2011

Notice of Continuation July 23, 2009

Art X Sec 3

53A-1-401(3)

53A-1-402(1)

53A-15-603

53A-11-901

**R277. Education, Administration.****R277-613. School District and Charter School Bullying and Hazing Policies and Training.****R277-613-1. Definitions.**

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

B. "Bullying" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(2) is done for the purpose of placing a school employee or student in fear of:

(a) physical harm to the school employee or student; or

(b) harm to property of the school employee or student.

(3) The conduct described in R277-613-1B constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

C. "Cyber-bullying" means using the Internet, a cell phone, or another device to send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.

D. "Harassment" means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual.

E. "Hazing" means intentionally or knowingly committing an act that:

(1)(a) endangers the physical health or safety of a school employee or student;

(b) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(c) involves consumption of any food, liquor, drug, or other substance;

(d) involves other physical activity that endangers the physical health and safety of a school employee or student; or

(e) involves physically obstructing a school employee's or student's freedom to move; and

(f)(i) is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event; or

(ii) if the person committing the act against a school employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.

(2) The conduct described in R277-613-1E constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

F. "Policy" means standards and procedures that include the provisions of Section 53A-11-901 and additional standards,

procedures, and training adopted in an open meeting by a local board of education or charter school board that define hazing and bullying, prohibit hazing and bullying, require annual discussion and training designed to prevent hazing and bullying among school employees and students and provide for enforcement through employment action or student discipline.

G. "Retaliate or retaliation" means an act or communication intended:

(1) as retribution against a person for reporting bullying or hazing; or

(2) to improperly influence the investigation of, or the response to, a report of bullying or hazing.

**R277-613-2. 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 the responsibility of the Board to provide assistance with and ensure school district/charter school compliance with Section 53A-11a-301.

B. The purpose of the rule is to require school districts and charter schools to implement bullying and hazing policies district and school wide, to provide for regular and meaningful training of school employees and students and to provide for enforcement of the policies in schools, at the state level and in public school athletic programs.

**R277-613-3. Utah State Board of Education Responsibilities.**

A. To the extent of resources available, the Board shall provide training opportunities or materials or both for employees of school districts and charter schools on bullying, including cyber-bullying, and hazing.

B. The Board may interrupt disbursements of funds consistent with Section 53A-1-401(3) for failure of a school district or charter school to comply with this rule.

**R277-613-4. Local School District and Charter School Responsibilities.**

A. Each school district and charter school shall implement a policy prohibiting bullying and hazing consistent with Section 53A-11a-301.

B. Each school district and charter school shall:

(1) post a copy of its policy on the school district/charter school website; and

(2) provide a copy of the school district/charter school policy or uniform resource locator (URL) to the State Superintendent of Public Instruction at the Utah State Office of Education.

C. The local board/charter school board shall annually review and immediately post the policy following the first board meeting of the school year.

D. Policies shall provide for training to students, staff, and volunteers consistent with the following:

(1) 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;

(2) 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;

(3) training specific to prohibitions against bullying or hazing of a sexual nature or with sexual overtones;

(4) 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;

E. Policies shall also:



(1) complement existing safe and drug free school policies and school harassment and hazing policies;

(2) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training; and

(3) include required strong responsive action against retaliation including assistance to harassed students and their parents in reporting subsequent problems and new incidents.

F. The policy shall also provide direction to employees about bullying and dealing with disruptive students. This part of the policy shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior;

(3) designate to whom notices shall be provided;

(4) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;

(5) include strategies to provide for necessary adult supervision;

(6) be clearly written and consistently enforced;

(7) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility; and

(8) provide notice to employees that violation(s) of this rule may result in employment discipline or action.

**R277-613-5. Training by School Districts and Charter Schools Specific to Participants in Public School Athletic Programs and School Clubs.**

A. Prior to any student or employee or volunteer coach participating in a public school sponsored athletic program, both curricular and extracurricular, or extracurricular club or activity, a student or coach shall participate in bullying and hazing prevention training.

B. School districts and charter schools may collaborate with the Utah High School Activities Association to develop and provide training.

C. Student athletes and extracurricular club members shall be informed of prohibited activities under this rule and notified of potential consequences for violation of the law or the rule or both.

D. School districts and charter schools that offer athletics shall provide annual training to all new students and new employees and require refresher training for all students and employees at least once every three years.

E. Training curriculum outlines, training schedules, and participant lists or signatures shall be maintained by each school or school district and provided to the Utah State Office of Education upon request.

**R277-613-6. Professional Responsibilities of Employee and Volunteer Coaches.**

A. All public school coaches shall act consistent with professional standards of R277-515 in all responsibilities and activities of their assignments.

B. Failure to act consistently with R277-515 toward students, colleagues and parents may result in discipline against an educator's license or termination of volunteer services.

**KEY: bullying, hazing, policies, training  
July 11, 2011**

**Art X Sec 3  
53A-1-401(3)**

**R277. Education, Administration.****R277-706. Public Education Regional Service Centers.****R277-706-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Eligible regional service center" means a regional service center formed by two or more school districts by means of an interlocal entity in accordance with Title 11, Chapter 13, Interlocal Cooperation Act.
- C. "USOE" means the Utah State Office of Education.

(1) the regional service center delivery of Utah Education Network services;

(2) the type, amount, and effectiveness of delivery of public and higher education related services; and

(3) the coordination of public and higher education related services.

**KEY: eligible regional service center  
July 11, 2011**

**Art X Sec 3  
53A-3-429(6)  
53A-1-401(3)**

**R277-706-2. 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-3-429(6) that directs the Board to make rules regarding eligible regional services center, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and procedures for school districts to form interlocal agreements and to provide for distribution of legislative funds to eligible regional service centers by the Board.

**R277-706-3. Eligible Regional Service Centers.**

A. Two or more school districts may enter into an interlocal agreement and form an interlocal entity.

B. An eligible regional service center may receive funds if the Legislature appropriates money.

C. An interlocal agreement entered into shall confirm and ratify the regional service center as of the effective date of the interlocal agreement.

**R277-706-4. Distribution of Funds.**

A. The USOE shall distribute funds, if provided by the Legislature, in equal amounts to eligible regional service centers based on:

(1) requests from eligible regional service centers; and

(2) satisfaction and submission of all information and requirements set by the Board.

B. The USOE shall provide notice that completed applications for regional service center funds are due to the USOE consistent with timelines provided by the USOE.

C. The Board may review and consider a different distribution plan for future years.

D. Legislative funding, if provided, shall be distributed to eligible regional service centers after July 1 of each year.

**R277-706-5. Eligible Regional Service Center Responsibilities.**

A. Eligible regional service centers shall submit an annual application for available funds to the Board consistent with USOE timelines.

B. A regional service center application for funds shall include:

(1) a copy of completed interlocal agreement(s);

(2) a proposed budget and request for funds from the Board;

(3) a current external audit of current regional service center assets and liabilities in the initial application for funds and with each annual application;

(4) assurance signed by all parties to the interlocal agreement that the USOE shall have access to all regional service center records upon request;

(5) an annual financial report from the previous fiscal year;

(6) a plan for the use and distribution of regional service center funds for the applicable fiscal year with specific attention to delivery of Utah Education Network services and the delivery of education-related services; and

(7) an annual performance report beginning with fiscal year 2012 including information about:

**R277. Education, Administration.****R277-713. Concurrent Enrollment of High School Students in College Courses.****R277-713-1. Definitions.**

A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by school district or charter school receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.

B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by a school district and a USHE institution, to provide college level courses to high school students.

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

D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and a school district/public school. Students continue to be enrolled in public schools, counted in Average Daily Membership, and receive credit toward graduation. They also receive college credit for courses.

E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.

F. "USHE" means the Utah System of Higher Education.

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

**R277-713-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

**R277-713-3. Student Eligibility.**

A. Schools and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience.

B. Local schools have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. To ensure that a student is prepared for college level work, an appropriate assessment shall be administered to the student prior to participation in all concurrent mathematics and English courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institutions.

D. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).

E. Schools and USHE institutions shall jointly coordinate

advice and information provided to a prospective or current high school student who participates in the concurrent enrollment program consistent with Section 53A-15-101. Advising shall include providing information on general education requirements at higher education institutions and assisting students or parents to efficiently choose concurrent enrollment courses to avoid duplication and excess credit hours.

**R277-713-4. Courses and Student Participation.**

A. The awarding of USHE institution credit for concurrent enrollment courses is the province of colleges and universities governed by USHE policies.

B. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. However, there may be a greater variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.

C. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

D. Only courses taken from a master list maintained by the Curriculum Section at the USOE shall be reimbursed from state concurrent enrollment funds.

E. The Board of Regents, after consultation with school districts/charter schools, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.

F. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and school district or charter school concurrent enrollment administrator. Concurrent enrollment funding is not intended for unilateral parent/student initiated college attendance or course-taking.

G. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and training activities for participating teachers.

H. Course content, procedures, examinations, teaching materials, and program monitoring shall be the responsibility of the appropriate USHE institution, shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or university campus.

I. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

J. Schools and USHE institutions shall jointly align information technology systems with all individual student academic achievement so that student information will be tracked through both education systems in accordance with Section 53A-1-603.5.

**R277-713-5. Program Delivery.**

A. Schools within the USHE that grant higher education/college credit may participate in the concurrent enrollment program, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.

B. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved.

C. The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.

D. Courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises are not eligible for concurrent enrollment funding. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

E. Concurrent enrollment is intended primarily for students in their last two years of high school.

(1) Concurrent enrollment may not include high school courses that are typically offered in grades 9 or 10.

(2) The Early College High School Program, specifically initiated to encourage students to earn college credit beginning in the ninth grade leading to a college diploma earned concurrently with a high school diploma, may enroll student Program participants in grades 9 and 10 in concurrent enrollment courses.

F. State reimbursement to school districts for concurrent enrollment courses may not exceed 30 semester hours per student per year.

G. Public schools/school districts shall use USOE designated 11-digit course codes for concurrent enrollment courses.

**R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.**

A. Tuition or fees may not be charged to high school students for participation in this program consistent with Section 53A-15-101(6)(b)(iii).

B. Students may be assessed a one-time enrollment charge per institution.

C. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

D. All students' costs related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

E. The school district/school shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers.

F. Credit:

(1) A student shall receive high school credit for concurrent enrollment classes that is consistent with the district policies for awarding credit for graduation.

(2) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(3) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

(4) Concurrent enrollment course credit shall count toward high school graduation requirements as well as for college credit.

**R277-713-7. Faculty Requirements.**

A. Nomination of adjunct faculty is the joint responsibility of the participating local school district(s) and the participating USHE institution. Public education teachers shall have secondary endorsements in the subject area(s) to be taught and meet highly qualified standards for their assignment(s) consistent with R277-510. Final approval of the adjunct faculty shall be determined by the appropriate USHE institution.

B. USHE institution faculty beginning their USHE employment in the 2005-06 school year who are not K-12

teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

C. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) USHE institutions and secondary schools shall share expertise and professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

**R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.**

A. Each district shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the district in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse districts for repeated concurrent enrollment courses. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. The funds shall first be allocated proportionally, based upon student credit hours delivered.

(1) Courses that are taught by public school educators: 60 percent of the funds shall be allocated to local school boards and charter schools, and 40 percent of the funds shall be allocated to the State Board of Regents.

(2) Courses taught by college or university faculty: 60 percent of the funds shall be allocated to the State Board of Regents, and 40 percent of the funds shall be allocated to local school boards and charter schools.

C. Each high school shall receive its proportional share of district concurrent enrollment monies allocated to the district pursuant to Section 53A-17a-120 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

D. Funds allocated to school districts for concurrent enrollment shall not be used for any other program.

E. District use of state funds for concurrent enrollment is limited to the following:

(1) aid in staff development of adjunct faculty in cooperation with the participating USHE institution;

(2) assistance with delivery costs for distance learning programs;

(3) participation in the costs of district or school personnel who work with the program;

(4) student textbooks and other instructional materials; and

(5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(6) districts/charter schools may purchase classroom equipment required to conduct concurrent enrollment courses.

(7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

F. School districts/charter schools shall provide the USOE with end-of-year expenditures reports itemized by the categories identified in R277-713-8D.

**R277-713-9. Annual Contracts and Other Student Instruction Issues.**

A. Collaborating school districts/charter schools and USHE institutions shall negotiate annual contracts including:

- (1) the courses offered;
- (2) the location of the instruction;
- (3) the teacher;
- (4) student eligibility requirements;
- (5) course outlines;
- (6) texts, and other materials needed; and
- (7) the administrative and supervisory services, in-service education, and reporting mechanisms to be provided by each party to the contract.

(a) each school district/charter school shall provide an annual report to the USOE regarding supervisory services and professional development provided by a USHE institution.

(b) each school district/charter school shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7B and C.

B. A school district/charter school shall provide a copy of the annual contract entered into between a school district/charter school and a USHE institution for the upcoming school year no later than May 30 annually.

C. The annual concurrent enrollment agreement between a USHE institution and a school district/charter school who has responsibility shall:

(1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses count toward a student's college record/transcript,

(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and

(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

**KEY: students, curricula, higher education**

**July 11, 2011**

**Notice of Continuation September 6, 2007**

**Art X Sec 3**

**53A-17a-120.5**

**53A-1-402(1)(c)**

**53A-1-401(3)**

**R307. Environmental Quality, Air Quality.****R307-204. Emission Standards: Smoke Management.****R307-204-1. Purpose and Goals.**

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impact on public health and visibility of prescribed fire and wildland fire.

**R307-204-2. Applicability.**

(1) R307-204 applies to all persons using prescribed fire or wildland fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

**R307-204-3. Definitions.**

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire or a wildland fire use event that affect the direction, duration, height or density of smoke.

"Burn Plan" means the plan required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Emission Reduction Techniques (ERT)" mean techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit or acre burned.

"Federal Class I Area" means any Federal land that is federally classified or reclassified Class I.

"Fire Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Non-burning Alternatives to Fire" means non-burning techniques that are used to achieve a particular land management objective, including but not limited to reduction of fuel loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restructuring. These alternatives are designed to replace the use of fire for at least the next five years.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Pile" means natural materials or debris resulting from some type of fuels management practice that have been relocated either by hand or machinery into a concentrated area.

"Pile Burn" means burning of individual piles.

"Prescribed Fire or Prescribed Burn" means any fire ignited by management actions to meet specific objectives, such as achieving resource benefits.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities. Structures, if any, are widely scattered.

"Wildland Fire" means any non-structure fire, other than prescribed fire, that occurs in the wildland.

"Wildland Fire Use Event" means naturally ignited wildland fire that is managed to accomplish specific pre-stated resource management objectives in predefined geographic areas.

"Wildland Fire Implementation Plan (WFIP)" means the plan required for each fire that is allowed to burn.

"WFIP Stage I" means the initial wildland fire strategy planning document. It is developed for fires less than 20 acres, with a low potential of spread and negative impacts. It must be completed within 8-hrs. of start.

"WFIP Stage II" means a more detailed wildland fire strategy planning document. It is developed for fires greater than 20 acres that are more active fires with a greater potential for geographic extent. It must be completed within 24-hrs. of start.

**R307-204-4. General Requirements.**

(1) Management of On-Going Fires. If, after consultation with the land manager, the executive secretary determines that a prescribed fire, wildland fire use event, wildland fire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop igniting additional prescribed fires.

(2) Emissions Calculations. In calculating emissions information required under R307-204, each land manager shall use emission factors approved by the executive secretary.

(3) Non-burning Alternatives to Fire. Beginning in 2004 and annually thereafter, each land manager shall submit to the executive secretary by March 15 a list of areas treated using non-burning alternatives to fire during the previous calendar year, including the number of acres, the specific types of alternatives used, and the location of these areas.

(4) Annual Emissions Goal. The executive secretary shall provide an opportunity for an annual meeting with land managers for the purpose of evaluation and adoption of the annual emission goal. The annual emission goal shall be developed in cooperation with states, federal land management agencies and private entities, to control prescribed fire emissions increases to the maximum feasible extent.

(5) Long-term Fire Projections. Each land manager shall provide to the executive secretary by March 15 annually long-term projections of future prescribed fire activity for annual assessment of visibility impairment.

**R307-204-5. Burn Schedule.**

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit the burn schedule to the executive secretary on forms provided by the Division of Air Quality, and shall include the following information for all prescribed fires including those smaller than 20 acres:

- (a) Project number and project name;
- (b) Air Quality Basin, UTM coordinate for the central point of the prescribed fire, project elevation, and county;
- (c) Total project acres, description of major fuels, type of burn, ignition method, and planned use of emission reduction techniques to support establishment of the annual emissions goal;
- (d) Earliest burn date and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

**R307-204-6. Small Prescribed Fires (de minimis).**

(1) A prescribed fire that covers less than 20 acres per burn shall be ignited only when the clearing index is 500 or greater.

(2) A prescribed fire that covers less than 20 acres per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the executive secretary.

(a) The prescribed fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the executive secretary by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) The land manager must include hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

**R307-204-7. Small Prescribed Pile Fires (de minimis).**

(1) Pile burns covering up to 30,000 cubic feet per day shall be ignited only when the clearing index is 500 or greater.

(2) Pile burns covering up to 30,000 cubic feet per day may be ignited when the National Weather Service Clearing Index is between 500 and 400 with approval of the executive secretary.

(a) The pile fire should be recorded as a de minimis prescribed fire on the Utah Annual Burn Schedule.

(b) The Land Manager is required to notify the executive secretary by fax, e-mail, or phone prior to ignition of the burn when burning below a National Weather Service Clearing Index is between 500 and 400.

(c) The land manager must include hourly photographs, a record of any complaints, hourly meteorological conditions and an hourly description of the smoke plume must be recorded and submitted.

**R307-204-8. Large Prescribed Fires.**

(1) Burn Plan. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit to the executive secretary a burn plan, including a fire prescription.

(2) Pre-Burn Information. For a prescribed fire that covers 20 acres or more per burn, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the executive secretary for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed fire requiring a burn plan shall be ignited before the executive secretary approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 0800 hours the following business day.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed burn, for each day of prescribed fire activity covering 20 acres or more, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn; and

(i) Emission reduction techniques applied.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the executive secretary for six months following the end of

the fire.

### **R307-204-9. Large Prescribed Pile Fires.**

(1) **Burn Plan.** For a prescribed pile fire that exceeds 30,000 cubic feet per day, the land manager shall submit to the executive secretary a burn plan, including a fire prescription.

(2) **Pre-Burn Information.** For a prescribed pile fire that exceeds 30,000 cubic feet or more per burn, the land manager shall submit pre-burn information to the executive secretary at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the executive secretary on the appropriate form provided by the Division of Air Quality by fax, electronic mail or postal mail and shall include the following information:

(a) The three-letter ID, project number, date submitted, name of person submitting the form, burn manager, and phone numbers;

(b) Summary of burn objectives, such as restoration or maintenance of ecological functions or indication of fire resiliency;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) Planned mitigation methods;

(e) The smoke dispersion or visibility model used and results;

(f) The estimated amount of total particulate matter anticipated;

(g) A description of how the public and land managers in neighboring states will be notified;

(h) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(i) Safety and contingency plans for addressing any smoke intrusions; and

(j) If the fire is in a nonattainment or maintenance area and is subject to general conformity (42 U.S.C. 7506(c)), a copy of the conformity demonstration showing that the fire meets the requirements of the Clean Air Act and conforms with the applicable State Implementation Plan.

(k) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5.

(l) Any other information needed by the executive secretary for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) **Burn Request.**

(a) The land manager shall submit to the executive secretary a burn request on the form provided by the Division of Air Quality by 1000 hours at least two business days before the planned ignition time. The form may be submitted by fax or electronic mail, and must include the following information:

(i) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(ii) The date submitted and by whom; and

(iii) The burn manager conducting the burn and phone numbers.

(b) No prescribed pile fire requiring a burn plan shall be ignited before the executive secretary approves the burn request.

(c) If a prescribed pile fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the executive secretary before the burn request is submitted. If a prescribed fire is not carried out, the land manager shall list the reasons on the burn request form provided by the Division of Air Quality and shall submit the form by fax or electronic mail to the executive secretary by 0800 hours the following business day.

(4) **Daily Emissions Report.** By 0800 hours on the day

following the prescribed pile burn, for each day of pile fire activity exceeding 30,000 cubic feet, the land manager shall submit to the executive secretary a daily emission report on the form provided by the Division of Air Quality including the following information:

(a) The three-letter identification and project number consistent with the annual burn schedule required in R307-204-5(1) above;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information including black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime ventilation;

(g) Nighttime smoke behavior;

(h) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed pile burn; and

(i) Emission reduction techniques applied.

(5) **Emission Reduction and Dispersion Techniques.** Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division of Air Quality. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) **Monitoring.** Land managers shall monitor the effects of the prescribed pile fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division of Air Quality or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

### **R307-204-10. Requirements for Wildland Fire Use Events.**

(1) **Burn Approval Required.**

(a) The land manager shall notify the executive secretary of any potential wildland fire use (WFU) event having a WFIP Stage I. The following information will be provided:

(i) UTM coordinate of the fire;

(ii) Active burning acres;

(iii) Probable fire size and daily anticipated growth in acres;

(iv) Types of wildland fuel involved;

(v) An emergency telephone number that is answered 24 hours a day;

(vi) Wilderness or Resource Natural Area designation, if applicable;

(vii) Distance to nearest community;

(viii) Elevation of fire; and

(ix) Fire's airshed number.

(b) The Land Managers shall notify the executive secretary of any potential wildland fire use event covering more than 20 acres or having a WFIP Stage II due to higher potential for spread and negative impacts. In addition to the information required for a WFU with a WFIP Stage I, the following additional information will be provided to the executive secretary as it is being developed:

(i) WFIP Stage II wildland fire implementation plan and anticipated emissions;

(ii) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated; and

(iii) Additional computer smoke modeling, if requested by the executive secretary.

(c) The executive secretary's approval of the smoke



management element of the wildland fire implementation plan shall be obtained before managing the fire as a wildland fire use event.

(2) Daily Emission Report for wildland fire use event. By 0800 hours on the business day following fire activity covering 20 acres or more, the land manager shall submit to the executive secretary the daily emission report on the form provided by the Division of Air Quality, including the following information:

- (a) The three-letter identification, project number, Air Quality Basin, and name of the burn manager;
  - (b) UTM coordinate;
  - (c) Dates and times of the start and end of the burn;
  - (d) Black acres by wildland fuel type;
  - (e) Estimated proportion of wildland fuel consumed by wildland fuel type;
  - (f) Proportion of moisture in the wildland fuel by size class;
  - (g) Emission estimates;
  - (h) Level of public interest or concern regarding smoke;
- and

(i) Conformance to the wildland fire implementation plan.

(3) Monitoring. The land manager shall monitor the effects of smoke on smoke sensitive receptors and visibility in Class I areas as directed by the wildland fire implementation plan. Complaints from the public shall be recorded in the project file. Records shall be available for inspection by the executive secretary for six months following the end of the fire.

**KEY: air quality, wildland fire, smoke, land manager**  
**July 7, 2011** **19-2-104(1)(a)**  
**Notice of Continuation March 4, 2010**

**R313. Environmental Quality, Radiation Control.****R313-12. General Provisions.****R313-12-1. Authority.**

The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8) and Section 63J-1-504.

**R313-12-2. Purpose and Scope.**

It is the purpose of these rules to state such requirements as shall be applied in the use of radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and safety to all persons at, or in the vicinity of, the place of use, storage, or disposal. These rules are intended to be consistent with the proper use of radiation machines and radioactive materials. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. See also Section R313-12-55.

**R313-12-3. Definitions.**

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced radioactive material" means material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6

percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

(c) (i) a discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) material that

(A) has been made radioactive by use of a particle accelerator; and

(B) is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) a discrete source of naturally occurring radioactive material, other than source material, that

(i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, has determined would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or

research activity.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Commission" means the U.S. Nuclear Regulatory Commission.

"Committed dose equivalent" (HT,50), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution, a Federal facility, or a medical facility.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of  $3.7 \times 10^{10}$  disintegrations or transformations per second (dps or tps).

"Cyclotron" means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of 10 mega-electron volts and is commonly used for production of short half-life radionuclides for medical use.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" ( $H_d$ ), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter ( $1000 \text{ mg/cm}^2$ ).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See sections 58-69-101 through 58-69-805, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Diffuse source" means a radionuclide that has been unintentionally produced or concentrated during the processing of materials for use for commercial, medical, or research activities.

"Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" ( $H_T$ ), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" ( $H_E$ ), means the sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ), and the weighting factor ( $w_T$ ) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Executive Secretary" means the executive secretary of the board.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of  $dQ$  by  $dm$  where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

"License" means a license issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Executive Secretary.

"Licensing state" means a state which, prior to November 30, 2007, was provisionally or finally designated as such by the

Conference of Radiation Control Program Directors, Inc., which reviewed state regulations to establish equivalency with the Suggested State Regulations and ascertained whether a State has an effective program for control of natural occurring or accelerator produced radioactive material.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one megaelectron volt. For purposes of these rules, "accelerator" is an equivalent term.

"Permit" means a permit issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Department in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17a-101 through 58-17a-801, Pharmacy Practice Act.

"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-

68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive materials released by a licensee, or to any other source of radiation under the control of a licensee or registrant. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant. For a licensee authorized to use radioactive materials in accordance with the requirements of Rule R313-32,

(1) the individual named as the "Radiation Safety Officer" must meet the training requirements for a Radiation Safety Officer as stated in Rule R313-32; or

(2) the individual must be identified as a "Radiation Safety Officer" on

(a) a specific license issued by the Executive Secretary, the U.S. Nuclear Regulatory Commission, or an Agreement State that authorizes the medical use of radioactive materials; or

(b) a medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Executive Secretary or is legally obligated to register with the Executive Secretary pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals  $2.58 \times 10^{-4}$  coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" (Hs) which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per cm<sup>2</sup>).

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

$((175(\text{Grams contained U-235})/350) + (50(\text{Grams U-233}/200) + (50(\text{Grams Pu})/200))$  is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of

Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in paragraphs (b), (c), and (d) of the definition of byproduct material found in Section R313-12-3.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

#### **R313-12-20. Units of Exposure and Dose.**

(1) As used in these rules, the unit of EXPOSURE is the coulomb per kilogram (C per kg). One roentgen is equal to  $2.58 \times 10^{-4}$  coulomb per kilogram of air.

(2) As used in these rules, the units of dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray equals 100 rad.

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram. One rad equals 0.01 Gy.

(c) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is

equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 Sv.

(d) Sievert (Sv) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

(3) As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

TABLE 1

Quality Factors and Absorbed Dose Equivalencies

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High energy protons	10	0.1

For the column in Table 1 labeled "Absorbed Dose Equal to a Unit Dose Equivalent", the absorbed dose in rad is equal to one rem or the absorbed dose in gray is equal to one Sv.

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Subsection R313-12-20(3), 0.01 Sv of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE 2

Mean Quality Factors, Q, and Fluence Per Unit Dose Equivalent for Monoenergetic Neutrons

Neutron Energy Mev	Quality Factor Q	Fluence per Unit Dose Equivalent neutrons cm <sup>-2</sup> rem <sup>-1</sup>	Fluence per Unit Dose Equivalent neutrons cm <sup>-2</sup> Sv <sup>-1</sup>
thermal			
2.5 x 10 <sup>-8</sup>	2	980 x 10 <sup>6</sup>	980 x 10 <sup>8</sup>
1 x 10 <sup>-7</sup>	2	980 x 10 <sup>6</sup>	980 x 10 <sup>8</sup>
1 x 10 <sup>-6</sup>	2	810 x 10 <sup>6</sup>	810 x 10 <sup>8</sup>
1 x 10 <sup>-5</sup>	2	810 x 10 <sup>6</sup>	810 x 10 <sup>8</sup>
1 x 10 <sup>-4</sup>	2	840 x 10 <sup>6</sup>	840 x 10 <sup>8</sup>
1 x 10 <sup>-3</sup>	2	980 x 10 <sup>6</sup>	980 x 10 <sup>8</sup>
1 x 10 <sup>-2</sup>	2.5	1010 x 10 <sup>6</sup>	1010 x 10 <sup>8</sup>
1 x 10 <sup>-1</sup>	7.5	170 x 10 <sup>6</sup>	170 x 10 <sup>8</sup>
5 x 10 <sup>-1</sup>	11	39 x 10 <sup>6</sup>	39 x 10 <sup>8</sup>
1	11	27 x 10 <sup>6</sup>	27 x 10 <sup>8</sup>
2.5	9	29 x 10 <sup>6</sup>	29 x 10 <sup>8</sup>
5	8	23 x 10 <sup>6</sup>	23 x 10 <sup>8</sup>
7	7	24 x 10 <sup>6</sup>	24 x 10 <sup>8</sup>
10	6.5	24 x 10 <sup>6</sup>	24 x 10 <sup>8</sup>
14	7.5	17 x 10 <sup>6</sup>	17 x 10 <sup>8</sup>
20	8	16 x 10 <sup>6</sup>	16 x 10 <sup>8</sup>
40	7	14 x 10 <sup>6</sup>	14 x 10 <sup>8</sup>
60	5.5	16 x 10 <sup>6</sup>	16 x 10 <sup>8</sup>
1 x 10 <sup>2</sup>	4	20 x 10 <sup>6</sup>	20 x 10 <sup>8</sup>
2 x 10 <sup>2</sup>	3.5	19 x 10 <sup>6</sup>	19 x 10 <sup>8</sup>
3 x 10 <sup>2</sup>	3.5	16 x 10 <sup>6</sup>	16 x 10 <sup>8</sup>
4 x 10 <sup>2</sup>	3.5	14 x 10 <sup>6</sup>	14 x 10 <sup>8</sup>

For the column in Table 2 labeled "Quality Factor", the values of Q are at the point where the dose equivalent is maximum in a 30 cm diameter cylinder tissue-equivalent phantom.

For the columns in Table 2 labeled "Fluence per Unit Dose Equivalent", the values are for monoenergetic neutrons incident normally on a 30 cm diameter cylinder tissue equivalent phantom.

**R313-12-40. Units of Radioactivity.**

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq), or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

(1) One becquerel (Bq) equals one disintegration or transformation per second.

(2) One curie (Ci) equals 3.7 x 10<sup>10</sup> disintegrations or transformations per second, which equals 3.7 x 10<sup>10</sup> becquerel, which equals 2.22 x 10<sup>12</sup> disintegrations or transformations per minute.

**R313-12-51. Records.**

(1) A licensee or registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation.

(2) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, may forward the following records to the Executive Secretary:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).  
NOTE: 10 CFR 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific U.S. Nuclear Regulatory Commission authorization. See 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

(3) If licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, R313-15-1005, and R313-15-1008; and

(b) records required by Subsection R313-15-1103(2)(d).  
(4) Prior to license termination, each licensee may forward the records required by Subsection R313-22-35(7) to the Executive Secretary.

(5) Additional records requirements are specified elsewhere in these rules.

**R313-12-52. Inspections.**

(1) A licensee or registrant shall afford representatives of the Executive Secretary, at reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein those sources of radiation are used or stored.

(2) A licensee or registrant shall make available to representatives of the Executive Secretary for inspection, at any reasonable time, records maintained pursuant to these rules.

**R313-12-53. Tests.**

(1) A licensee or registrant shall perform upon instructions from a representative of the Board or the Executive Secretary or shall permit the representative to perform reasonable tests as the representative deems appropriate or necessary including, but not limited to, tests of:

- (a) sources of radiation;
- (b) facilities wherein sources of radiation are used or stored;
- (c) radiation detection and monitoring instruments; and
- (d) other equipment and devices used in connection with utilization or storage of licensed or registered sources of

radiation.

**R313-12-54. Additional Requirements.**

The Board may, by rule, or order, impose upon a licensee or registrant requirements in addition to those established in these rules that it deems appropriate or necessary to minimize any danger to public health and safety or the environment.

**R313-12-55. Exemptions.**

(1) The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

(2) U.S. Department of Energy contractors or subcontractors and U.S. Nuclear Regulatory Commission contractors or subcontractors operating within this state are exempt from these rules to the extent that the contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation. The following contractor categories are included:

(a) prime contractors performing work for the U.S. Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from the sites and the performance of contract services during temporary interruptions of the transportation;

(b) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and

(d) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory Commission when the state and the U.S. Nuclear Regulatory Commission jointly determine (i) that the exemption of the prime contractor or subcontractor is authorized by law; and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

**R313-12-70. Impounding.**

Sources of radiation shall be subject to impounding pursuant to Section 19-3-111. Persons who have a source of radiation impounded are subject to fees established in accordance with the Legislative Appropriations Act for the actual cost of the management and oversight activities performed by representatives of the Executive Secretary.

**R313-12-100. Prohibited Uses.**

(1) A hand-held fluoroscopic screen using x-ray equipment shall not be used unless it has been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

**R313-12-110. Communications.**

All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the Division of Radiation Control, P.O. Box 144850, 195 North 1950 West, Salt Lake City, Utah 84114-4850.

**R313-12-111. Submission of Electronic Copies.**

(1) All submissions to the Executive Secretary not exempt in paragraph R313-12-111(5) shall also be submitted to the Executive Secretary in electronic format. This requirement extends to all attachments to these documents.

(2) The electronic copy shall be a true, accurate, searchable and reproducible copy of the official submission, except that it need not include signatures or professional stamps.

(3) All electronic copies shall be submitted on a CD or DVD nonrewritable disc, except that documents smaller than 25 megabytes may be submitted by email.

(4) All documents shall be submitted in one of the following electronic formats, at the choice of the submitter:

(a) A searchable PDF document (a document that may be read and searched using Adobe Reader); or

(b) A Microsoft Word document.

(5) The requirements of this rule do not apply to:

(a) X-ray registration applications;

(b) Submissions shorter than 25 pages unless otherwise ordered by the Executive Secretary;

(c) Public comments received during a formal public comment period;

(d) Correspondence received from individuals or organizations that are not currently regulated by the agency, unless that correspondence is about proposing an activity or facility that would be subject to agency regulation; and

(e) Documents used to make payments to the agency.

(6) If an official submission includes information for which business confidentiality is claimed or that is security-sensitive, this requirement applies only to that portion of the submission for which no confidentiality is claimed.

(7) The Executive Secretary may waive the requirements of R313-12-111(1) for good cause.

**KEY: definitions, units, inspections, exemptions**

**October 13, 2010**

**19-3-104**

**Notice of Continuation July 7, 2011**

**19-3-108**



**R313. Environmental Quality, Radiation Control.****R313-14. Violations and Escalated Enforcement.****R313-14-1. Introduction, Purpose, and Authority.**

(1) The purpose of the radiation control inspection and compliance program is to assure the radiological safety of the public, radiation workers, and the environment by:

- (a) ensuring compliance with Utah Radiation Control rules or license conditions;
- (b) obtaining prompt correction of violations;
- (c) deterring future violations; and
- (d) encouraging improvement of licensee, permittee or registrant performance, including the prompt identification, reporting, and correction of potential safety problems.

(2) Consistent with the purpose of the radiation control inspection and compliance program, prompt and vigorous enforcement action shall be taken when dealing with licensees, permittees or registrants who fail to demonstrate adherence to these rules. Enforcement action is dependent on the circumstances of the case and may require that discretion be exercised after consideration of these standards. Sanctions have been designed to ensure that a licensee, permittee or registrant does not deliberately profit from violations of the Utah Radiation Control rules.

(3) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-103.5(1)(d), 19-3-104(4) and 19-3-104(8), 19-3-108, 19-3-109, and 19-3-111.

**R313-14-2. Responsibilities.**

(1) The Board has authorized the Executive Secretary to:

- (a) enforce rules through the issuance of orders and assess penalties in accordance with Section 19-3-109; and

- (b) impound radioactive material in accordance with Section 19-3-111.

(2) The Executive Secretary is authorized to issue Notices of Violations.

**R313-14-3. Definitions.**

As used in R313-14, the following definitions apply:

(1) "Material False Statement" means a statement that is false by omission or commission and is relevant to the regulatory process.

(2) "Requirement" means a legally binding requirement such as a statute, rule, license condition, permit, registration, technical specification, or order.

(3) "Similar" means those violations which could have been reasonably expected to have been prevented by the licensee's, permittee's or registrant's corrective action for a previous violation.

(4) "Willfulness" means the deliberate intent to violate or falsify, and includes careless disregard for requirements. Acts which do not rise to the level of careless disregard are not included in this definition.

**R313-14-10. Severity of Violations.**

(1) Violations are placed in one of two major categories. These categories are:

- (a) electronically produced radiation operations; or
- (b) radioactive materials operations.

(2) Regulatory requirements vary in public health and environmental safety significance. Therefore, it is essential that the relative importance of violations be identified as the first step in the enforcement process. Based upon their relative hazard, violations are assigned to one of five levels of severity.

(3) Severity Level I is assigned to violations that are the most significant and Severity Level V violations are the least significant. In general, violations that are included in Severity Levels I and II involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of

more than minor concern, however, if left uncorrected, they could lead to a more serious concern. Severity Level V violations are of minor safety or environmental concern.

(4) The severity of a violation shall be characterized at the level best suited to the significance of the particular violation. A severity level may be increased if the circumstances surrounding the violation involve careless disregard of requirements, deception, or other indications of willfulness. In determining the specific severity level of a violation involving willfulness, consideration will be given to factors like the position of the person involved in the violation, the significance of an underlying violation, the intent of the violator and the economic advantage gained by the violation. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

(5) The severity level assigned to material false statements may be Severity Level I, II or III, depending on the circumstances surrounding the statement. In determining the specific severity level of a violation involving material false statements or falsification of records, consideration is given to factors like the position of the person involved in the violation, for example, a first line supervisor as opposed to a senior manager, the significance of the information involved, and the intent of the violator. Negligence not amounting to careless disregard would be weighted differently than careless disregard or deliberateness. The relative weight given to these factors in arriving at the appropriate severity level is dependent on the circumstances of the violation.

**R313-14-15. Enforcement Actions.**

This Section describes the enforcement sanctions available to the Executive Secretary and specifies the conditions under which they are to be used.

(1) Notice of Violation

(a) A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the licensee, permittee or registrant to provide a written statement describing:

- (i) corrective steps which have been taken by the licensee, permittee or registrant and the results achieved;

- (ii) corrective steps which shall be taken to prevent recurrence; and

- (iii) the date when full compliance will be achieved.

(b) The Executive Secretary may require responses to Notices of Violation to be under oath. Normally, responses under oath may be required only in connection with civil penalties and orders.

(c) A Notice of Violation is used by the Executive Secretary as the method for formalizing the existence of a violation. The Notice may be the only enforcement action taken or it may be used as a basis for other enforcement actions. Licensee, permittee or registrant initiative for self-identification and correction of problems is encouraged. The Executive Secretary shall not generally issue Notices of Violation for a violation that meets the five following tests:

- (i) it was identified by the licensee, permittee or registrant;

- (ii) it fits in Severity Level IV or V;

- (iii) it was reported, in writing, to the Executive Secretary;

- (iv) it was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

- (v) it was not a violation that could reasonably be expected to have been prevented by the licensee's, permittee's or registrant's corrective action for a previous violation.

(d) Licensees, permittees or registrants are not ordinarily cited for violations resulting from matters outside of their control, like equipment failures that were not avoidable by reasonable quality assurance measures or management controls. Generally however, licensees, permittees and registrants are held responsible for the acts of their employees. Accordingly, the

rules should not be construed to excuse personal errors.

(2) Civil Penalty.

(a) A civil penalty is a monetary penalty that may be imposed for violation of Utah Radiation Control Rules or lawful orders issued by the Executive Secretary. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations. Generally, civil penalties are imposed for Severity Level I violations, are imposed for Severity Level II violations, in the absence of mitigating circumstances, are considered for Severity Level III violations, and may be imposed for Severity Level IV and V violations that are similar to previous violations for which the licensee, permittee or registrant failed to take effective corrective action.

(b) The level of a civil penalty is established so that a penalty does not exceed \$5,000 per violation. Except as modified by provision of the next paragraphs, the base civil penalties are as follows:

TABLE

Severity Level I Violations	\$5,000
Severity Level II Violations	\$4,000
Severity Level III Violations	\$2,500
Severity Level IV Violations	\$ 750
Severity Level V Violations	\$ 250

(i) Comprehensive licensee, permittee or registrant programs for detection, correction and reporting of problems that may constitute, or lead to, violation of regulatory requirements are important and consideration may be given for effective internal audit programs. When licensees, permittees or registrants find, report, and correct a violation expeditiously and effectively, the Executive Secretary may apply adjustment factors to reduce or eliminate a civil penalty.

(ii) Ineffective licensee, permittee or registrant programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant violations, repeated poor performance in an area of concern, or serious breakdown in management controls, the Executive Secretary may apply the full enforcement authority.

(iii) The Executive Secretary may review the proposed civil penalty case on its own merits and adjust the civil penalty upward or downward appropriately. After considering the relevant circumstances, adjustments to these values may be made for the factors identified below:

(A) Reduction of the civil penalty may be given when a licensee, permittee or registrant identifies the violation and promptly reports, in writing, the violation to the Executive Secretary. No consideration will be given to this factor if the licensee, permittee or registrant does not take immediate action to correct the problem upon discovery.

(B) Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee, permittee or registrant takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed.

(C) Reduction of the civil penalty may be given for prior good performance in the general area of concern.

(D) The civil penalty may be increased as much as 50% for cases where the licensee, permittee or registrant had prior knowledge of a problem as a result of an internal audit, or specific Executive Secretary or industry notification, and had failed to take effective preventive steps.

(E) The civil penalty may be increased as much as 50% where multiple examples of a particular violation are identified during the inspection period.

(c) A violation of a continuing nature shall, for the purposes of calculating the proposed civil penalty, be considered a separate violation for each day of its continuance. A continuing violation is not considered a repeat violation. In the event a violation is repeated within five years, the scheduled

amount of the civil penalty may be increased 25%; and for repeat violations of Severity Levels II and III, the penalty may not be avoided by compliance. Other rights and procedures are not affected by the repeat violation.

(d) Payment of civil penalties shall be made within 30 working days of receipt of a Notice of Violation and Notice of Proposed Imposition of a Civil Penalty. An extension may be given when extenuating circumstances are shown to exist. Payment shall be made by check, payable to the Division of Radiation Control and mailed to the Division at the address shown with the Notice of Violation.

(3) Orders.

(a) An Order is a written directive to modify, suspend, or revoke a license, permit or registration; to cease and desist from a given practice or activity; to issue a civil penalty; or to take other action that may be necessary.

(b) Modification Orders are issued when some change in licensee, permittee or registrant equipment, procedures or management control is necessary.

(c) Suspension Orders may be used:

(i) to remove a threat to the public health and safety or the environment;

(ii) when the licensee, permittee or registrant has not responded adequately to other enforcement action;

(iii) when the licensee, permittee or registrant interferes with the conduct of an inspection; or

(iv) for a reason not mentioned above for which license, permit or registration revocation is authorized.

(v) Suspensions may apply to all or part of the regulated activity. Ordinarily, an activity is not suspended, nor is a suspension prolonged for failure to comply with requirements when the failure is not willful or when adequate corrective actions have been taken.

(d) Revocation Orders may be used:

(i) when a licensee, permittee or registrant is unable or unwilling to comply with these rules;

(ii) when a licensee, permittee or registrant refuses to correct a violation;

(iii) when a licensee, permittee or registrant does not respond to a Notice of Violation;

(iv) when a licensee, permittee or registrant does not pay a fee required by the Department; or

(v) for any other reason for which revocation is authorized.

(e) Cease and Desist Orders are used to stop unauthorized activity that has continued despite notification by the Executive Secretary that the activity is unauthorized.

(f) Orders may be made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the Order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing is afforded. For cases in which a basis could reasonably exist for not taking the action as proposed, the licensee, permittee or registrant shall be afforded an opportunity to show cause why the Order should not be issued in the proposed manner.

(4) Escalation of Enforcement Sanctions.

(a) In accordance with the provisions of Section 19-3-111 the radioactive material of a person may be impounded. Administrative procedures will be conducted as provided by R313-14-20, prior to disposal of impounded radioactive materials.

(b) Violations of Severity Levels I, II or III are considered to be very serious. If repetitive very serious violations occur, the Executive Secretary may issue Orders in conjunction with other enforcement actions to achieve immediate corrective actions and to deter their recurrence. In accordance with the criteria contained in this section, the Executive Secretary shall carefully consider the circumstances of cases when selecting and

applying the appropriate sanctions.

(c) The progression of enforcement actions for repetitive violations may be based on violations under a single license, permit or registration. The actual progression to be used in a particular case may depend on the circumstances. When more than one facility is covered by a single license, permit or registration, the normal progression may be based on repetitive violations under the same license, permit or registration. It should be noted that under some circumstances, for example, where there is common control over some facet of facility operations, repetitive violations may be charged even though the second violation occurred at a different facility or under a different license, permit or registration.

(5) Related Administrative Actions.

(a) In addition to the formal enforcement mechanisms of Notices of Violation and Orders, the Executive Secretary may use administrative mechanisms, like enforcement conferences, bulletins, circulars, information notices, generic letters, and confirmatory action letters as part of the enforcement and regulatory program. Licensees, permittees and registrants are expected to adhere to obligations and commitments resulting from these processes and the Executive Secretary shall, if necessary, issue appropriate orders to make sure that expectation is realized.

(b) Enforcement Conferences are meetings held by the Executive Secretary with licensee, permittee or registrant management to discuss safety, public health, or environmental problems, compliance with regulatory requirements, proposed corrective measures, including schedules for implementation, and enforcement options available to the Executive Secretary.

(c) Bulletins, Circulars, Information Notices, and Generic Letters are written notifications to groups of licensees, permittees or registrants identifying specific problems and calling for or recommending specific actions on their part. Responses to these notifications may be required.

(d) Confirmatory Action Letters are letters confirming a licensee's, permittee's or registrant's agreement to take certain actions to remove significant concerns about health and safety, or the environment.

**R313-14-25. Public Disclosure of Enforcement Actions.**

Enforcement actions and responses are publicly available for inspection. In addition, press releases are generally issued for Notices of Proposed Imposition of a Civil Penalty and Orders. In the case of orders and civil penalties related to violations at Severity Level I, II or III, press releases may be issued at the time of the Order or the Notice of Proposed Imposition of the Civil Penalty. Press releases are not normally issued for Notices of Violation.

**KEY: violations, penalties, enforcement**

**October 20, 2006**

**19-3-109**

**Notice of Continuation July 7, 2011**

**19-3-111**

**R313. Environmental Quality, Radiation Control.****R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.****R313-16-200. Purpose and Authority.**

(1) The purpose of this rule is to prescribe requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation. This rule provides for the registration of individuals providing inspection services to a facility where one or more radiation machines are installed or located.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(10).

**R313-16-215. Definitions.**

"Qualified expert" means an individual having the knowledge and training to measure regulatory parameters on radiation machines, to evaluate radiation safety programs, to evaluate radiation levels, and to give advice on radiation protection needs while conducting inspections of radiation machine facilities registered with the Department. Qualified experts are not considered employees or representatives of the Division of Radiation Control or the State.

"Sorting Center" means a facility in which radiation machines are in storage until they are shipped out of state.

"Storage" means a condition in which a radiation machine is not being used for an extended period of time, and has been made inoperable.

**R313-16-220. Exemptions.**

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of Rule R313-16, providing the dose equivalent rate averaged over an area of ten square centimeters does not exceed 0.5 mrem (5.0 uSv) per hour at five centimeters from accessible surfaces of the equipment.

(2) Radiation machines while in transit are exempt from the requirements of Section R313-16-230. See Section R313-16-250 for other applicable requirements.

(3) Television receivers are exempt from the requirements of Rule R313-16.

(4) Radiation machines while in the possession of a manufacturer, assembler, or a sorting center are exempt from the requirements of Section R313-16-230.

(5) Radiation machines owned by an agency of the Federal Government are exempt from the requirements of Rule R313-16.

**R313-16-225. Responsibility for Radiation Safety Program.**

(1) The registrant shall be ultimately responsible for radiation safety, but may designate another person to implement the radiation safety program. When, in the Executive Secretary's opinion, neither the registrant nor the registrant's designee is sufficiently qualified to insure safe use of the machine; the Executive Secretary may order the registrant to designate another individual who has adequate qualifications.

(2) The registrant or the registrant's designee shall:

(a) develop a detailed program of radiation safety that assures compliance with the applicable requirements of these rules, including Section R313-15-101;

(b) have instructions given concerning radiation hazards and radiation safety practices to individuals who may be occupationally exposed;

(c) have surveys made and other procedures carried out as required by these rules; and

(d) keep a copy of all reports, records, and written policies and procedures required by these rules.

**R313-16-230. Registration of Radiation Machines.**

(1) Ionizing radiation producing machines not exempted

by Section R313-16-220 shall be registered with the Executive Secretary.

(2) Registration shall be required annually in accordance with a schedule established by the Executive Secretary.

(3) Registration for the facility is achieved when the Executive Secretary receives the following:

(a) a current and complete application form DRC-10 for registration of radiation machines; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the Executive Secretary through receipts for the remittance of the registration fee.

**R313-16-231. Additional Requirements for the Issuance of a Registration for Particle Accelerators Excluding Therapeutic Radiation Machines (See Rule R313-30).**

(1) In addition to the requirements of Section R313-16-230, a registrant who proposes to use a particle accelerator shall submit an application to the Executive Secretary containing the following:

(a) information demonstrating that the applicant, by reason of training and experience, is qualified to use the accelerator in question for the purpose requested in a manner that will minimize danger to public health and safety or the environment;

(b) a discussion which demonstrates that the applicant's equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or the environment;

(c) the name and qualifications of the individual, appointed by the applicant, to serve as radiation safety officer pursuant to Section R313-35-140;

(d) a description of the applicant's or the staff's experience in the use of particle accelerators and radiation safety training; and

(e) a description of the radiation safety training the applicant will provide to particle accelerator operators.

**R313-16-233. Notification of Intent to Provide Servicing and Services.**

(1) Persons engaged in the business of installing or offering to install radiation machines or engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State shall notify the Executive Secretary of the intent to provide these services within 30 days following the effective date of this rule or, thereafter, prior to furnishing or offering to furnish these services.

(2) The notification shall specify:

(a) that the applicable requirements of these rules have been read and understood;

(b) the services which will be provided;

(c) the training and experience that qualify for the discharge of the services; and

(d) the type of measurement instrument to be used, frequency of calibration, and source of calibration.

(3) For the purpose of Section R313-16-233, services may include but shall not be limited to:

(a) installation or servicing of radiation machines and associated radiation machine components; and

(b) calibration of radiation machines or radiation measurement instruments or devices.

(4) Individuals shall not perform the services listed in Subsection R313-16-233(3) unless they are specifically stated for that individual on the notification of intent required in Subsection R313-16-233(1) and the complete information required by Subsection R313-16-233(2) has been received by the Executive Secretary.

**R313-16-235. Designation of Registrant.**

The owner or lessee of a radiation machine is the registrant.

The registrant shall be responsible for penalties imposed under the Executive Secretary's escalated enforcement authority, see Rule R313-14.

**R313-16-240. Reciprocal Recognition of Registration or License.**

Radiation machines from jurisdictions other than the State of Utah may be operated in this state for a period of less than 30 days providing that the requirements of Section R313-16-280 have been met and providing they are properly registered or licensed with the State Agency having jurisdiction over the office directing the activities of the individuals operating the radiation machines. Radiation machines operating under reciprocity may be inspected pursuant to Section R313-16-290.

**R313-16-250. Report of Changes.**

The registrant shall send written notification within 14 working days to the Executive Secretary when:

- (1) there are changes in location or ownership of a radiation machine;
- (2) radiation machines are retired from service;
- (3) radiation machines are put in storage or returned to service from storage; or
- (4) modifications in facility or equipment are made that might reasonably be expected to effect compliance under the terms of these rules.

**R313-16-260. Approval Not Implied.**

Registration does not constitute approval of activities performed under the registration and no person shall state or imply that activities under the registration have been approved by the Executive Secretary.

**R313-16-270. Transferor, Assembler, or Installer Obligation.**

(1) Persons who sell, lease, transfer, lend, dispose, assemble, or install a radiation machine in this state shall notify the Executive Secretary within 14 working days of the following:

- (a) the name and address of the person who received the machine and also the name and address of the new registrant of the machine if not the same;
- (b) the manufacturer, model, and serial number of the master control of the radiation machine and the number of x-ray tubes transferred; and
- (c) the date of transfer of the radiation machine.

(2) Radiation machine equipment or accessories shall not be installed if the equipment will not meet the requirements of these rules when installation is completed.

(3) Reporting Compliance. Assemblers who install one or more components into a radiation machine system or subsystem, shall certify that the equipment meets the standards of these rules. A copy of this certification shall be transmitted to the purchaser and to the Executive Secretary within 14 working days following the completion of the installation.

(4) Certification can be accomplished by providing the following in conjunction with the information required by Section R313-16-250 and Subsection R313-16-270(1):

- (a) the full name and address of the assembler and the date of assembly or installation;
- (b) a statement as to whether the equipment is a replacement for other equipment, in addition to other equipment, or new equipment in a new facility;
- (c) an affirmation that the applicable rules have been met;
- (d) a statement of the type and intended use of the radiation machine system or subsystem, for example "radiographic-stationary general purpose x-ray;" and
- (e) a list of the components which were assembled or installed into the radiation machine system or subsystem,

identifying the components by type, manufacturer, model number, and serial number.

**R313-16-275. Obligation of Equipment Registrant or Recipient of New Equipment.**

The registrant of a radiation machine shall not allow the equipment to be put into operation until it has been determined that the facility in which it is installed meets the shielding and design requirements of Rule R313-28; see Sections R313-28-32, R313-28-200 and R313-28-450.

**R313-16-280. Out-of-State Radiation Machines.**

(1) Whenever a radiation machine is to be brought into the state, for either temporary or extended use, the person proposing to bring the machine into the state shall give written notice to the Executive Secretary at least three working days before the machine is to be used in the state. The notice shall include the type of radiation machine; the manufacturer model and serial number of the master control; the nature, duration, and scope of use; and the exact location where the radiation machine is to be used. If, for a specific case, the three working-day period would impose an undue hardship, the person may, upon application to the Executive Secretary, obtain permission to proceed sooner.

- (2) In addition, the out-of-state person shall:
  - (a) comply with the applicable portions of these rules;
  - (b) supply the Executive Secretary other information as the Executive Secretary requests.

**R313-16-290. Inspection of Radiation Machines and Facilities.**

(1) Registrants shall assure that radiation machines registered pursuant to Section R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules and to assist in lowering radiation exposure to as low as reasonably achievable levels, see Section R313-15-101. Inspections may be performed by representatives of the Executive Secretary or by independent qualified experts.

(2) Inspections may, at the Executive Secretary's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

FACILITY TYPE	MAXIMUM TIME BETWEEN INSPECTIONS
Hospital or Radiation Therapy Facility	one year
Medical Facility using Fluoroscopic or Computed Tomography (CT) Units	one year
Medical Facility Using General Radiographic Devices	two years
Chiropractic	two years
Dental	five years
Podiatry	five years
Veterinary	five years
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	one year
Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes	five years
Other	one to five years

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the Executive Secretary.

**R313-16-291. Inspection Services.**

Registrants shall only utilize qualified experts who have been registered by the Executive Secretary in accordance with Section R313-16-293. Registrants may also utilize inspectors from the Division of Radiation Control in lieu of registered qualified experts.

**R313-16-292. Minimum Qualifications for Registration of Inspection Services.**

A qualified expert who is engaged in the business of furnishing or offering to furnish inspection services at facilities shall meet the training and experience criteria developed by the Department. At a minimum, the training and experience shall include:

(1) Bachelor's degree in health physics, chemistry, biology, physical or environmental science plus one year full-time paid professional related experience, such as performing radiation safety evaluations in a hospital.

(a) An advanced degree in a related field may be substituted for one year of required experience; or

(2) Five years full-time paid professional, directly related work experience.

**R313-16-293. Application for Registration of Inspection Services.**

(1) Each qualified expert who is providing or offering to provide inspection services at facilities registered with the Executive Secretary shall complete an application for registration on a form prescribed by the Executive Secretary and shall submit all information required by the Executive Secretary as indicated on the form. A qualified expert must complete the registration process prior to providing services.

(2) Individuals applying for registration under Section R313-16-293 shall personally sign and submit to the Executive Secretary an attestation statement:

(a) that they have read and understand the requirements of these rules; and

(b) that they will document inspection items defined by the Executive Secretary on a form prescribed by the Executive Secretary; and

(c) that they will follow guidelines for the evaluation of x-ray equipment defined by the Executive Secretary; and

(d) that, except for those facilities where a registered qualified expert is a full-time employee, they will limit inspections to facilities with which they have no direct conflict of interest; and

(e) that radiation exposure measurements and peak tube potential measurements will be made with instruments which have been calibrated biennially by the manufacturer of the instrument or by a calibration laboratory accredited in x-ray calibration procedures by the American Association of Physicians in Medicine, American Association for Laboratory Accreditation, Conference of Radiation Control Program Directors, Health Physics Society or the National Voluntary Laboratory Accreditation Program; and

(f) that the calibration of radiation exposure measuring and peak tube potential measuring instruments used to evaluate compliance of x-ray systems with the requirements of these rules will include at least secondary level traceability to a National Institute of Standards and Technology, or similar international agency, transfer standard instrument or transfer standard source; and

(g) that they will make available to representatives of the Executive Secretary documents concerning the calibration of any radiation exposure measuring or peak tube potential measuring instrument used to evaluate compliance of x-ray systems; and

(h) that they or the registrant will submit to the Executive Secretary, within 30 calendar days after completion of an inspection, a written report of compliance or noncompliance;

and

(i) that reports of items of noncompliance will include:

(i) the name of the facility inspected, and

(ii) the date of the inspection, and

(iii) the manufacturer, model number, and serial number or Utah identification number of the control unit for the radiation machine, and

(iv) the requirements of the rule where compliance was not achieved, and

(v) the manner in which the facility or radiation machine failed to meet the requirements, and

(vi) a signed commitment from the registrant of the radiation machine facility that the problem will be fixed within 30 days of the date the written report of noncompliance is submitted to the Executive Secretary; and

(vii) that all reports of compliance or noncompliance will contain a statement signed by the qualified expert acknowledging under penalties of law that all information contained in the report is truthful, accurate, and complete; and

(viii) that they acknowledge that they are subject to the provisions of Section R313-16-300.

(3) Individuals applying for registration under Section R313-16-293 shall attach to their application a copy of two inspection reports that demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c). The inspection reports shall pertain to inspections performed within the last two years.

**R313-16-294. Issuance of Registration Certificate for Inspection Services.**

Upon a determination that an applicant meets the requirements of these rules, the Executive Secretary shall issue a registration certificate for inspection services.

**R313-16-295. Expiration of Registration Certificates for Inspection Services.**

A registration certificate for inspection services shall expire at the end of the day on the date stated therein.

**R313-16-296. Renewal of Registration Certificate for Inspection Services.**

(1) Timely renewal of a registration certificate for inspection services is possible when:

(a) the qualified expert files an application for renewal of a registration certificate for inspection services 30 days in advance of the registration certificate expiration date and in accordance with Section R313-16-293, and

(b) the qualified expert attaches to the application documentation that they performed a minimum of two inspections in Utah under these rules each year the previous registration certificate was in effect. An applicant who did not complete the minimum number of inspections in Utah may, as an alternative, attach to the application documentation that they performed four inspections at facilities in other states. These four inspections shall demonstrate their work product follows the evaluation guidelines defined by the Executive Secretary pursuant to Subsection R313-16-293(2)(c).

(2) A registered qualified expert who allows a registration certificate to expire is no longer a qualified expert and may not perform inspection services that will be accepted by the Executive Secretary. Reapplication may be accomplished pursuant to Section R313-16-293.

**R313-16-297. Revocation of Registration Certificate for Inspection Services.**

A registration certificate for inspection services may be revoked by the Executive Secretary for any matter of deliberate misconduct pursuant to Section R313-16-300 or for

misfeasance, malfeasance or nonfeasance.

**R313-16-300. Deliberate Misconduct.**

(1) Any registrant, applicant for registration, employee of a registrant or applicant; or any contractor, including a supplier or consultant, subcontractor, employee of a contractor or subcontractor of any registrant or applicant for registration, who knowingly provides to any registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a registrant'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 registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation of any registration issued by the Executive Secretary; or

(b) Deliberately submit to the Executive Secretary, a registrant, an applicant, or a registrant'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 R313-16-300(1)(a) or (b) may be subject to enforcement action in accordance with Rule R313-14.

(3) For the purposes of Subsection R313-16-300(1)(a), deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a registrant or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any registration issued by the Executive Secretary; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a registrant, applicant, contractor, or subcontractor.

**KEY: x-rays, inspections**

**September 14, 2007**

**Notice of Continuation July 7, 2011**

**19-3-104**

**R313. Environmental Quality, Radiation.****R313-17. Administrative Procedures.****R313-17-1. Application of Rule.**

This rule applies to proceedings under Title 19, Chapter 3 (Radiation Control Act).

**R313-17-2. Public Notice and Public Comment Period.**

(1) The Executive Secretary shall give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to use in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by publication in a newspaper of general circulation in the area affected by the proposed action. Notice shall also be given to persons on a mailing list developed by the Executive Secretary and those who request in writing to be notified.

**R313-17-3. Public Comments, Response to Comments and Requests for Public Hearings.**

(1) During the public comment period provided under R313-17-2, any interested person may submit written comments on the proposed action and may request a public hearing, if no hearing has already been scheduled.

(2) 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.

(3) Comments received during the public comment period and during any hearing shall be considered in making the final decision.

(4) At the time of the final decision, the Executive Secretary shall issue a response to comments, which shall include:

(a) Specific provisions, if any, that have been changed in the final action and the reasons for the change; and

(b) A brief description and response to all significant comments raised during the public comment period or during any hearing.

(5) The Executive Secretary's response to public comments shall be available to the public.

**R313-17-4. Public Hearings.**

(1) This section applies to hearings for public comment on proposed actions specified in R313-17-2. This section does not govern adjudicative proceedings.

(2) The Executive Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in the proposed action.

(3) 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 proposed action.

(4) The Executive Secretary shall hold a public hearing whenever he receives written notice of opposition to a proposed action and a request for a hearing within 30 days of public notice under R313-17-2.

(5)(a) Public notice of the hearing shall be given as

specified in R313-17-2.

(b) The public comment period under R313-17-2 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) Whenever possible the Executive Secretary shall schedule a hearing under this section at a time and location convenient to the parties involved.

(d) Any person at the hearing may submit oral or written statements and data concerning the proposed action. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required.

(e) A tape recording or written transcript of the hearing shall be made available to the public.

**R313-17-5. Administrative Procedures General Provisions.****(1) PURPOSE AND SCOPE**

R313-17-5 through R313-17-13 set out procedures for conducting formal adjudicative proceedings in accordance with the Utah Administrative Procedures Act (UAPA), Section 63G-4-102 et seq. and govern:

(a) the contest of the validity of initial order or notice of violation as described in R313-17-5(2);

(b) the contest of proposed imposition of civil penalties under Section 19-3-109; and

(c) other formal adjudicative proceedings before the Radiation Control Board.

**(2) INITIAL PROCEEDINGS EXEMPT FROM UAPA**

Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Radiation Control Act are not governed by UAPA as specified in Section 63G-4-102(2)(k). This includes, but is not limited to, initial proceedings regarding:

(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses;

(b) requests for variances, exemptions, and other approvals;

(c) notices of violation and orders associated with notices of violation;

(d) orders to comply and orders to cease and desist;

(e) impoundment of radioactive material;

(f) orders for decommissioning;

(g) declaratory orders; and

(h) orders for surveying, monitoring, sampling, or information;

**(3) DESIGNATION OF PROCEEDINGS**

(a) Contest of an initial order or notice of violation or proposed imposition of civil penalties shall be conducted as a formal proceeding.

(b) The Board in accordance with Section 63G-4-202(3) 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.

(c) Unless otherwise stated in R313, informal adjudicative proceedings shall be conducted in accordance with Section 63G-4-203.

**(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, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

**(5) COMPUTATION OF TIME**

Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.



**R313-17-6. Commencing a Formal Adjudicative Proceeding.**

(1) Except as otherwise permitted by emergency orders as described in Section 63G-4-502, all adjudicative proceedings shall be commenced by either:

(a) a Notice of Agency Action in accordance with Section 63G-4-201, if proceedings are commenced by the Board; or

(b) a Request for Agency Action in accordance with R313-17-6(2), if proceedings are commenced by a person other than the Board.

(2)(a) The validity of initial orders, notices of violation and proposed imposition of civil penalties, as described in R313-17-5(1) and (2), may be contested by filing a written Request for Agency Action with the Board and submitted to:

Executive Secretary, Utah Radiation Control Board  
Division of Radiation Control  
168 North 1950 West  
PO Box 144850  
Salt Lake City, Utah 84114-4850.

(b) Any such request is governed by and shall comply with the requirements of Section 63G-4-201(3) and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.

(c)(i) All initial orders or notices of violation are effective upon issuance and shall become final if not contested within 30 days after the date issued.

(ii) Issuance of such orders or notices of violation means the time a signed order is mailed by certified mail to the recipient's most current address or hand delivered to the recipient.

(iii) If delivery by certified mail is refused, the issued order or notice shall be sent by regular first class mail.

(d) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review or judicial appeal.

**(3) RESPONSE TO REQUEST FOR AGENCY ACTION**

In accordance with Section 63G-4-201(3)(d) and (e), 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.

**(4) PRE-HEARING RECORD**

The Executive Secretary shall compile an administrative record prior to a scheduled hearing and give any party the opportunity to supplement the record. The pre-hearing record shall also consist of pleadings or other documents filed prior to the hearing.

**R313-17-7. Parties and Intervention.****(1) DETERMINATION OF A PARTY.**

The following persons are Parties to a formal proceeding governed by these rules:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a license application that was approved or disapproved by order of the Executive Secretary;

(b) The Executive Secretary of the Radiation Control Board; and

(c) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom the Board has granted intervention under R313-17-7(2).

**(2) INTERVENTION**

A petition for intervention may be filed by a petitioner to commence an adjudicative proceeding in accordance with R313-17-6(2) or to intervene after a notice of agency action or request for agency action has been filed. A petitioner for intervention shall meet the following requirements:

(a)(i) The request for agency action is timely filed in accordance with R313-17-6(2); or

(ii) The Petition to Intervene in a proceeding commenced

by a party other than the Petitioner for Intervention is filed with the Board, with a copy to all parties, within 20 days from the date of the Notice of Agency Action or Request for Agency Action.

(b) The Petition to Intervene:

(i) Identifies the proceedings in which intervention is sought;

(ii) Contains a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding and the petitioner qualifies as an Intervenor under Section 63G-4-207; and

(iii) Includes a statement of relief sought from the Board, including the basis thereof.

(c) Unless modified by the Presiding Officer, any party may respond to a Petition for Intervention during the period allowed for responsive pleadings under Section 63G-4-204. The Chair of the Radiation Control Board may act as Presiding Officer for purposes of this paragraph.

(d) Intervention may only be granted by order of the Board to a petitioner who meets the requirements of R313-17-7(2)(a) and (b).

**(3) DESIGNATION OF PARTIES**

Unless otherwise designed by the Hearing Officer:

(a) The person filing a Request for Agency Action shall be the Petitioner and the Executive Secretary shall be the Respondent.

(b) In a proceeding requested by a Petitioner for Intervention, the person granted Intervenor status shall be the Petitioner. The Executive Secretary and the person to whom the challenged order or notice is directed shall be the Respondents.

**(4) 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).

**R313-17-8. Conduct of Proceedings.****(1) ROLE OF BOARD**

(a) The Board is the "agency head" as that term is used in Section 63G-4. The Board is also the "presiding officer," as that term is used in Section 63G-4, except:

(i) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(ii) The Board may by order appoint one or more Presiding Officers to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his or her authority as specified in this Rule to another Board member.

**(2) APPOINTED PRESIDING OFFICERS**

Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except grant of intervention, stays of orders and issuance of the final order. As used in these rules, the term Presiding Officer shall mean Presiding Officers if more than one Presiding Officer is appointed by the Board.

**(3) PRE-HEARING CONFERENCES**

The Presiding Officer may direct the Parties to appear at a specified time and place for pre-hearing conferences for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

**(4) BRIEFS**

(a) Unless otherwise directed by the Presiding Officer, 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 Presiding Officer.

(b) Response briefs may not be filed unless permitted by the Presiding Officer.

**(5) SCHEDULES**

(a) The Presiding Officer shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

(b) The parties are encouraged to prepare a joint proposed schedule. If the parties cannot agree on a joint proposed schedule, the Presiding Officer may consider proposals by any party.

(6) EXTENSIONS OF TIME

Except as otherwise provided by statute, the Presiding Officer may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R313-17-8(5). The Presiding Officer may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

(7) MOTIONS

All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the Presiding Officer. A memorandum in opposition to a motion may be filed within ten 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.

(8) FILING AND COPIES OF SUBMISSIONS

The original of any motion, brief, petition 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 to all parties or their counsel of record.

**R313-17-9. Hearings.**

(1) CONDUCT OF HEARING

The Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

(2) ORDER OF PRESENTATION

Unless otherwise directed by the Presiding Officer, the Executive Secretary shall present its case first, followed by the Petitioner and any other party, then the Executive Secretary, and other parties if appropriate, shall have the opportunity for rebuttal.

**R313-17-10. Orders.**

(1) PROPOSED ORDERS BY PARTIES

Unless otherwise directed by the Presiding Officer, each party may provide proposed orders for the Presiding Officer within ten days of the conclusion of the hearing.

(2) DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS

(a) The appointed Officer presiding over the adjudicative proceeding shall prepare a recommended order, provide a copy of the order to the Board and mail a copy of the order to all parties or their counsel of record.

(b) The Board shall review the recommended order and hearing record.

(c) The Board may give each party the opportunity to make a presentation to the Board specific to the recommended order.

(d) After deliberation, the Board shall determine whether to accept, reject or modify the recommended order. The Board may remand part or all of the matter to the Presiding Officer for further proceedings.

(e) The Board may modify this procedure with notice to all parties.

(3) FINAL ORDERS

The Board shall issue a final order which shall include the information required by Sections 63G-4-208 or 63G-4-203(1)(i).

**R313-17-11. Stays of Orders.**

(1) STAY OF ORDERS PENDING ADMINISTRATIVE

ADJUDICATION

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the Board. If granted, a stay would suspend the challenged Order for the period as directed by the Board.

(b) The Board may order a stay of the Order that is the subject of the formal adjudicative proceeding if the party seeking the Stay demonstrates the following:

(i) The party seeking the Stay will suffer irreparable harm unless the stay issues;

(ii) The threatened injury to the party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The Stay, if issued, would not be adverse to the public interest; and

(iv) 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 adjudication.

(2) STAY OF THE ORDER PENDING JUDICIAL REVIEW

(a) A party seeking a stay of the Board's final order during judicial review shall file a motion with the Board.

(b) The Board as Presiding Officer may grant a stay of its order during the pendency of judicial review if the standards of R317-17-11(1)(b) are met.

**R313-17-12. Reconsideration.**

No agency review under Section 63G-4-301 is available. A party may request reconsideration of an order of the Presiding Officer as provided in Section 63G-4-302.

**R313-17-13. Disqualification of Presiding Officer(s).**

(1) DISQUALIFICATION OF PRESIDING OFFICER

(a) A member of the Board or other Presiding Officer shall disqualify himself or herself from performing the functions of the Presiding Officer regarding any matter in which he or she, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he or she has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he or she has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the Board or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(2) MOTIONS FOR DISQUALIFICATION

A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the Board.

**R313-17-14. 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 R313-17-6.

**R313-17-15. Requests for Records.**

Requests for records under the Utah Government Record

Access and Management Act, Title 63G, Chapter 2, Utah Code Ann., are not governed by R313. See R305-1.

**KEY: administrative procedures, public comment, public hearings, orders**

**September 12, 2002** **19-3-103.5**

**Notice of Continuation July 7, 2011** **19-3-104**

**R313. Environmental Quality, Radiation Control.****R313-18. Notices, Instructions and Reports to Workers by Licensees or Registrants—Inspections.****R313-18-1. Purpose and Authority.**

(1) The purpose of this rule is to establish requirements for notices, instructions and reports by licensees or registrants to individuals engaged in work under a license or registration and options available to such individuals in connection with inspections of licensees or registrants.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(4) and 19-3-104(8).

**R313-18-2. General.**

The rules of R313-18 shall apply to all persons who receive, possess, use, own or transfer a source of radiation licensed by or registered with the Department pursuant to the rules in R313-16, R313-19 or R313-22.

**R313-18-11. Posting of Notices to Workers.**

(1) Licensees or registrants shall post current copies of the following documents:

(a) the rules in R313-15 and R313-18;

(b) the license, certificate of registration, conditions or documents incorporated into the license by reference and amendments thereto;

(c) the operating procedures applicable to work under the license or registration; and

(d) a notice of violation involving radiological working conditions, proposed imposition of civil penalty, order issued pursuant to R313-14, or any response from the licensee or registrant.

(2) If posting of a document specified in R313-18-11(1)(a), (b), or (c) is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

(3) DRC-04 "Notice to Employees," shall be posted by licensees or registrants wherever individuals work in or frequent a portion of a restricted area.

(4) Documents from the Executive Secretary which are posted pursuant to R313-18-11(1)(d) shall be posted within five working days after receipt of the documents from the Executive Secretary; the licensee's or registrant's response, if there is one, shall be posted for a minimum of five working days after dispatch from the licensee or registrant. The documents shall remain posted for a minimum of five working days or until action correcting the violation has been completed, whichever is later.

(5) Documents, notices or forms posted pursuant to R313-18-11 shall appear in a sufficient number of places to permit individuals engaged in work under the license or registration to observe them on the way to or from any particular work location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

**R313-18-12. Instructions to Workers.**

(1) All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 1.0 mSv (100 mrem):

(a) shall be kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) shall be instructed in the health protection considerations associated with exposure to radiation or radioactive material to the individual and potential offspring, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these rules and licenses for the protection of personnel from exposure to radiation or radioactive material;

(d) shall be instructed as to their responsibility to report promptly to the licensee or registrant a condition which may constitute, lead to, or cause a violation of the Act, these rules, or a condition of the licensee's license or unnecessary exposure to radiation or radioactive material;

(e) shall be instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to R313-18-13.

(2) In determining those individuals subject to the requirements of R313-18-12(1), licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions shall be commensurate with potential radiological health protection considerations for the workplace.

**R313-18-13. Notifications and Reports to Individuals.**

(1) Radiation exposure data for an individual and the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in R313-18-13. The information reported shall include data and results obtained pursuant to these rules, orders, or license conditions, as shown in records maintained by the licensee or registrant pursuant to R313-15-1107. Notifications and reports shall:

(a) be in writing;

(b) include appropriate identifying data such as the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably social security number;

(c) include the individual's exposure information; and

(d) contain the following statement:

"This report is furnished to you under the provisions of the Utah Administrative Code Section R313-18-13. You should preserve this report for further reference."

(2) Licensees or registrants shall make dose information available to workers as shown in records maintained by the licensee or registrant pursuant to R313-15-1107. The licensee shall provide an annual report to each individual monitored under R313-15-502 of the dose received in that monitoring year if:

(a) The individual's occupational dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue; or

(b) The individual requests his or her annual dose report.

(3) Licensees or registrants shall furnish a written report of the worker's exposure to sources of radiation at the request of a worker formerly engaged in activities controlled by the licensee or registrant. The report shall include the dose record for each year the worker was required to be monitored pursuant to R313-15-502. The report shall be furnished within 30 days from the date of the request, or within 30 days after the dose of the individual has been determined by the licensee or registrant, whichever is later. The report shall cover the period of time that the worker's activities involved exposure to sources of radiation and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(4) When a licensee or registrant is required pursuant to R313-15-1202, R313-15-1203, or R313-15-1204 to report to the Executive Secretary an exposure of an individual to sources of radiation, the licensee or registrant shall also provide the individual a written report on the exposure data included in the report to the Executive Secretary. This report shall be

transmitted at a time no later than the transmittal to the Executive Secretary.

(5) At the request of a worker who is terminating employment with the licensee or registrant in work involving exposure to radiation or radioactive material, during the current year, the licensee or registrant shall provide at termination to the worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

#### **R313-18-14. Presence of Representatives of Licensees or Registrants and Workers During Inspection.**

(1) Licensees or registrants shall afford representatives of the Board or the Executive Secretary, at reasonable times, the opportunity to inspect materials, machines, activities, facilities, premises, and records pursuant to these rules.

(2) During an inspection, representatives of the Board or the Executive Secretary may consult privately with workers as specified in R313-18-15. The licensee or registrant may accompany representatives during other phases of an inspection.

(3) If, at the time of inspection, an individual has been authorized by the workers to represent them during Department inspections, the licensee or registrant shall notify the representatives of the Board or the Executive Secretary of the authorization and shall give the workers' representative an opportunity to accompany the representatives during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in R313-18-12.

(5) Different representatives of licensees or registrants and workers may accompany the representatives of the Board or the Executive Secretary during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the representatives of the Board or the Executive Secretary.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany representatives of the Board or the Executive Secretary during the inspection of physical working conditions.

(7) Notwithstanding the other provisions of R313-18-14, representatives of the Board or the Executive Secretary are authorized to refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection. With regard to areas containing information classified by an Agency of the U.S. Government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regard to areas containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

#### **R313-18-15. Consultation with Workers During Inspections.**

(1) Representatives of the Board or the Executive Secretary may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of these rules and licenses to the extent the representatives deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection, workers may bring privately to the attention of the representatives of the Board or the Executive Secretary, either orally or in writing, a past or

present condition which the worker has reason to believe may have contributed to or caused a violation of the Act, these rules, or license condition, or an unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. A notice in writing shall comply with the requirements of R313-18-16(1).

(3) The provisions of R313-18-15(2) shall not be interpreted as authorization to disregard instructions pursuant to R313-18-12.

#### **R313-18-16. Request by Workers for Inspections.**

(1) A worker or representative of workers believing that a violation of the Act, these rules, or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Executive Secretary. The notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by representatives of the Board or the Executive Secretary no later than at the time of inspection except that, upon the request of the worker giving the notice, his name and the name of individuals referred to therein shall not appear in a copy or on a record published, released, or made available by the Department except for good cause shown.

(2) If, upon receipt of the notice, representatives of the Board or the Executive Secretary, determine that the complaint meets the requirements set forth in R313-18-16(1), and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if the alleged violation exists or has occurred. Inspections pursuant to R313-18-16 need not be limited to matters referred to in the complaint.

(3) A licensee, registrant or contractor or subcontractor of a licensee or registrant shall not discharge or discriminate against a worker because that worker has filed a complaint or instituted or caused to be instituted a proceeding under these rules or has testified or is about to testify in a proceeding or because of the exercise by the worker on behalf of the worker or others of an option afforded by R313-18.

#### **R313-18-17. Inspections Not Warranted -- Informal Review.**

(1)(a) If the representatives of the Board or the Executive Secretary determine, with respect to a complaint under Section R313-18-16, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the Executive Secretary shall notify the complainant in writing of that determination. The complainant may obtain review of the determination by submitting a written statement of position with the Executive Secretary. The Executive Secretary will provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the Executive Secretary. The Executive Secretary will provide the complainant with a copy of the statement by certified mail.

(b) Upon the request of the complainant, the Board may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering written and oral views presented, the Board shall affirm, modify, or reverse the determination of the representatives of the Board or the Executive Secretary and furnish the complainant and the licensee or registrant a written notification of the decision and

the reason therefor.

(2) If the Executive Secretary determines that an inspection is not warranted because the requirements of R313-18-16(1) have not been met, the complainant shall be notified in writing of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of R313-18-16(1).

**KEY: radioactive materials, inspections, radiation safety, licensing**

**October 13, 2010**

**19-3-104**

**Notice of Continuation July 7, 2011**

**19-3-108**

**R313. Environmental Quality, Radiation Control.****R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.****R313-25-1. Purpose and Authority.**

(1) The purpose of this rule is to prescribe the requirements for the issuance of licenses for the land disposal of wastes received from other persons.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4), 19-3-104(8), 19-3-104(11), and 19-3-104(12).

(3) The requirements of R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

**R313-25-2. Definitions.**

As used in R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in R313-25-19 and R313-25-20 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under R313-25.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

"Waste" means those low-level radioactive wastes containing radioactive material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in (b), (c), and (d) of the definition for byproduct material found in Subsection R313-12-3.

**R313-25-3. Pre-licensing Plan Approval Criteria for Siting of Commercial Radioactive Waste Disposal Facilities.**

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Executive Secretary before applying for a license. Plans shall meet the siting criteria and plan approval requirements of Section R313-25-3.

(2) The siting criteria and plan approval requirements in R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet distant from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles distant from existing permanent dwellings, residential areas, and other habitable structures, including schools, churches, and historic structures;

(x) areas five miles distant from surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas 1000 feet distant from archeological sites to which adverse impacts cannot reasonably be mitigated;

(xii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

(xiii) drinking water source protection areas designated by the Utah Drinking Water Board;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l when the distance from the surface to the ground water is less than 100 ft.;

(iii) areas of extensive withdrawal of water, mineral or energy resources.

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains.

(4) Commercial radioactive waste disposal facilities may not be located within a distance to existing drinking water wells and watersheds for public water supplies of five years ground water travel time plus 1000 feet.

(5) The plan approval siting application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.

(6) The plan approval siting application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.

(7) Emergency response and safety.

(a) The plan approval siting application shall demonstrate the availability and adequacy of services for on-site emergencies, including medical and fire response. The application shall provide written evidence that the applicant has coordinated on-site emergency response plans with the local emergency planning committee (LEPC).

(b) The plan approval siting application shall include a comprehensive plan for responding to emergencies at the site.

(c) The plan approval siting application shall show proposed routes for transportation of radioactive wastes within the state. The plan approval siting application shall address the transportation means and routes available to evacuate the population at risk in the event of on-site accidents, including spills and fires.

(8) The plan approval siting application shall provide evidence that if the proposed disposal site is on land not owned by state or federal government, that arrangements have been made for assumption of ownership in fee by a state or federal agency.

(9) Siting Authority. The Executive Secretary recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

#### **R313-25-4. License Required.**

(1) Persons shall not receive, possess, or dispose of waste at a land disposal facility unless authorized by a license issued by the Executive Secretary pursuant to R313-25 and R313-22.

(2) Persons shall file an application with the Executive Secretary pursuant to R313-22-32 and obtain a license as provided in R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

#### **R313-25-5. Content of Application.**

In addition to the requirements set forth in R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in R313-25-6 through R313-25-10.

#### **R313-25-6. General Information.**

The general information shall include the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under R313-25-6(1).

(2) Qualifications of the applicant shall include the following:

(a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in R313-25-6(2)(a) shall be provided;

(c) a description of the applicant's personnel training program; and

(d) the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) the location of the proposed disposal site;

(b) the general character of the proposed activities;

(c) the types and quantities of waste to be received, possessed, and disposed of;

(d) plans for use of the land disposal facility for purposes other than disposal of wastes; and

(e) the proposed facilities and equipment; and

(4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

#### **R313-25-7. Specific Technical Information.**

The application shall include certain technical information. The following information is needed to determine whether or not the applicant can meet the performance objectives and the applicable technical requirements of R313-25:

(1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

(2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.

(3) Descriptions of the principal design criteria and their



relationship to the performance objectives.

(4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.

(5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.

(6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage; and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of R313-25

(7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.

(8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.

(9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in R313-25-19 and monitoring of occupational radiation exposure to ensure compliance with the requirements of R313-15 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in R313-25-33.

### **R313-25-8. Technical Analyses.**

(1) The licensee or applicant shall conduct a site-specific performance assessment and receive Executive Secretary approval prior to accepting any radioactive waste if:

(a) the waste was not considered in the development of the limits on Class A waste and not included in the analyses of the Draft Environmental Impact Statement on 10 CFR Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste," NUREG-0782. U.S. Nuclear Regulatory Commission. September 1981, or

(b) the waste is likely to result in greater than 10 percent of the dose limits in R313-25-19 during the time period at which peak dose would occur, or

(c) the waste will result in greater than 10 percent of the

total site source term over the operational life of the facility, or (d) the disposal of the waste would result in an unanalyzed condition not considered in R313-25.

(2) A licensee that has a previously-approved site-specific performance assessment that addressed a radioactive waste for which a site-specific performance assessment would otherwise be required under R313-25-8(1) shall notify the Executive Secretary of the applicability of the previously-approved site-specific performance assessment at least 60 days prior to the anticipated acceptance of the radioactive waste.

(3) The licensee shall not accept radioactive waste until the Executive Secretary has approved the information submitted pursuant to R313-25-8(1) or (2).

(4) The licensee or applicant shall also include in the specific technical information the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

(a) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

(b) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(c) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

(d) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, surface drainage of the disposal site, and the effects of changing lake levels. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

(5)(a) Notwithstanding R313-25-8(1), any facility that proposes to land dispose of significant quantities of concentrated depleted uranium (more than one metric ton in total accumulation) after June 1, 2010, shall submit for the Executive Secretary's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of concentrated depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period shall be a minimum of 10,000 years. Additional simulations shall be performed for the period where peak dose occurs and the results shall be analyzed qualitatively.

(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Executive Secretary of the performance assessment required in R313-25-8(5)(a).

(c) For purposes of this R313-25-8(5) only, "concentrated depleted uranium" means waste with depleted uranium

concentrations greater than 5 percent by weight.

**R313-25-9. Institutional Information.**

The institutional information submitted by the applicant shall include:

- (1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of R313-25-16 are met and will assume responsibility for institutional control after site closure and for post-closure observation and maintenance.
- (2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

**R313-25-10. Financial Information.**

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of R313-25.

**R313-25-11. Requirements for Issuance of a License.**

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Executive Secretary upon finding that:

- (1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;
- (2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;
- (3) the applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of R313-25-19;
- (4) the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of R313-25-20;
- (5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are adequate to protect the public health and safety in accordance with R313-15;
- (6) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;
- (7) the applicant's demonstration provides reasonable assurance that the requirements of R313-25 will be met;
- (8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in R313-25-11(3) through (6) and that the institutional control meets the requirements of R313-25-28.
- (9) the financial or surety arrangements meet the requirements of R313-25.

**R313-25-12. Conditions of Licenses.**

- (1) A license issued under R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through

transfer of control of the license to a person, unless the Executive Secretary finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

- (2) The Executive Secretary may require the licensee to submit written statements under oath.
- (3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Executive Secretary.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Executive Secretary. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Executive Secretary pursuant to R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Executive Secretary has inspected the land disposal facility and has found it to conform with the description, design, and construction described in the application for a license.

(7) The Executive Secretary may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Executive Secretary deems appropriate or necessary in order to:

- (a) protect health or to minimize danger to life or property;
- (b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Executive Secretary deems necessary or appropriate to effectuate the purposes of the Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

**R313-25-13. Application for Renewal or Closure.**

(1) An application for renewal or an application for closure under R313-25-14 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with R313-25-5 through 25-10. Applications for closure shall be filed in accordance with R313-25-14. Information contained in previous applications, statements, or reports filed with the Executive Secretary under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Executive Secretary has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Executive Secretary will apply the criteria set forth in R313-25-11.

**R313-25-14. Contents of Application for Site Closure and Stabilization.**

(1) Prior to final closure of the disposal site, or as otherwise directed by the Executive Secretary, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included in the original license application submitted and approved under R313-25-

7(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

(c) proposed revision of plans for:

(i) decontamination or dismantlement of surface facilities;

(ii) backfilling of excavated areas; or

(iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with R313-25-14(1), the Executive Secretary shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of R313-25 will be met.

#### **R313-25-15. Post-Closure Observation and Maintenance.**

The licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Executive Secretary in accordance with R313-25-16. The licensee shall remain responsible for the disposal site for an additional five years. The Executive Secretary may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

#### **R313-25-16. Transfer of License.**

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Executive Secretary finds:

(1) that the disposal site was closed according to the licensee's approved disposal site closure plan;

(2) that the licensee has provided reasonable assurance that the performance objectives of R313-25 have been met;

(3) that funds for care and records required by R313-25-33(4) and (5) have been transferred to the disposal site owner;

(4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and

(5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under R313-25-11(8) will be met.

#### **R313-25-17. Termination of License.**

(1) Following the period of institutional control needed to meet the requirements of R313-25-11, the licensee may apply for an amendment to terminate the license.

(2) This application will be reviewed in accordance with the provisions of R313-22-32.

(3) A license shall be terminated only when the Executive Secretary finds:

(a) that the institutional control requirements of R313-25-11(8) have been met;

(b) that additional requirements resulting from new information developed during the institutional control period have been met;

(c) that permanent monuments or markers warning against intrusion have been installed; and

(d) that records required by R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Executive Secretary immediately prior to license termination.

#### **R313-25-18. General Requirement.**

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in R313-25-19 and 25-22.

#### **R313-25-19. Protection of the General Population from Releases of Radioactivity.**

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 0.25 mSv (0.025 rem) to the whole body, 0.75 mSv (0.075 rem) to the thyroid, and 0.25 mSv (0.025 rem) to any other organ of any member of the public. No greater than 0.04 mSv (0.004 rem) committed effective dose equivalent or total effective dose equivalent to any member of the public shall come from groundwater. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

#### **R313-25-20. Protection of Individuals from Inadvertent Intrusion.**

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

#### **R313-25-21. Protection of Individuals During Operations.**

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by R313-25-19. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

#### **R313-25-22. Stability of the Disposal Site After Closure.**

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

#### **R313-25-23. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.**

(1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of R313-25.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of R313-25.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988,

"Floodplain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Executive Secretary will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25 or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of R313-25 or significantly mask the environmental monitoring program.

#### **R313-25-24. Disposal Site Design for Near-Surface Land Disposal.**

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

#### **R313-25-25. Near Surface Land Disposal Facility Operation and Disposal Site Closure.**

(1) Wastes designated as Class A pursuant to R313-15-1009 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of R313-25. This segregation is not necessary for Class A wastes if they

meet the stability requirements of R313-15-1009(2)(b).

(2) Wastes designated as Class C pursuant to R313-15-1009 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of R313-25-25(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of R313-15-105 at the time the license is transferred pursuant to R313-25-16.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in R313-25-26(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Executive Secretary for approval.

#### **R313-25-26. Environmental Monitoring.**

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning

of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

#### **R313-25-27. Alternative Requirements for Design and Operations.**

The Executive Secretary may, upon request or on his own initiative, authorize provisions other than those set forth in R313-25-24 and 25-26 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of R313-25.

#### **R313-25-28. Institutional Requirements.**

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other equivalents as determined by the Executive Secretary, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Executive Secretary, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

#### **R313-25-30. Applicant Qualifications and Assurances.**

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

#### **R313-25-31. Funding for Disposal Site Closure and Stabilization.**

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Executive Secretary approved cost estimates reflecting the Executive Secretary approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense,

the Executive Secretary will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Executive Secretary will accept these arrangements only if they are considered adequate to satisfy the requirements of R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Executive Secretary to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Executive Secretary; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Executive Secretary, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Executive Secretary include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Executive Secretary. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Executive Secretary, and the license has been transferred to the site owner.

#### **R313-25-32. Financial Assurances for Institutional Controls.**

(1) Prior to the issuance of the license, the applicant shall provide for Executive Secretary approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the Executive Secretary to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in R313-25-32(1) relevant to institutional control shall be submitted to the Executive Secretary for prior approval.

#### **R313-25-33. Maintenance of Records, Reports, and Transfers.**

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Executive Secretary.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in R313-25-33(4) as a condition of license termination unless the Executive Secretary otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to R313-25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) Notwithstanding R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Executive Secretary at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Executive Secretary regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Executive Secretary as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified financial statement annually with the Executive Secretary in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to R313-25, shall submit annual reports to the Executive Secretary. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Executive Secretary may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, (2006), which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

#### **R313-25-34. Tests on Land Disposal Facilities.**

Licensees shall perform, or permit the Executive Secretary to perform, any tests the Executive Secretary deems appropriate or necessary for the administration of the rules in R313-25, including, but not limited to, tests of:

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

#### **R313-25-35. Executive Secretary Inspections of Land Disposal Facilities.**

(1) Licensees shall afford to the Executive Secretary, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Executive Secretary for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Executive Secretary may copy and take away copies of, for the Executive Secretary's use, any records required to be kept pursuant to R313-25.

**KEY: radiation, radioactive waste disposal, depleted uranium**

**April 4, 2011**

**Notice of Continuation October 5, 2006**

**19-3-104**

**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, 264.18(a)(2), and 279.1, 2008 ed., 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**

**January 15, 2010**

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**19-6-105**

**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 No. 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 R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(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 40 CFR 261.1(c).

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

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

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

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

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

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

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

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in 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, gasification (as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10), 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 (a)(12)(i), 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 beneficiation, provided that:

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

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in 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 naphthenic 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).

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

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in R315-1-1(c) which incorporates by reference 40 CFR 261.1(c)(8).

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

(A) Submit a one-time notice to the Executive Secretary which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief

description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

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

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

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of R315-2-4(a)(20).

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

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

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

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

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

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in R315-2-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Executive Secretary that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

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

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

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in R315-5-1.11, which incorporates by reference 40 CFR 262.11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have

been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in R315-2-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of R315-7 and R315-8.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under R315-2-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

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

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

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of R315-2-4(a)(21)(ii). Such records must at a minimum include:

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

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

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

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

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

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in R315-2-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c)(8), by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes when exported for recycling provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.40.

(iii) Used, broken CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39(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 shearing.

(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; 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<sub>2</sub> 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, K178, and K181 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. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

**(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 119 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 119 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., as amended by 70 FR 9138, February 24, 2005, 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, 63G-4, 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 63G-3-601.
- (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 63G-3, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, 63G-4, and 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 63G-3-601 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 permit in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a permit 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 permit, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit 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, 2009 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

**R315-2-27. Exclusions/Exemptions.**

The requirements as found in 40 CFR subpart E, sections 261.39 through 261.41, 2007 ed., are adopted and incorporated by reference.

**KEY: hazardous wastes**

**January 15, 2010**

**Notice of Continuation July 13, 2011**

**19-6-105**

**19-6-106**



**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.

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

(4) Permits for less than an entire facility. The 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, an application 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 or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendment under Utah Solid and Hazardous Waste Act or RCRA that render the facility subject to the requirement to have a RCRA permit or State permit 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 under R317-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(b)), 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, 2003 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, certification, or application. This period may be extended by

request of the Executive Secretary and the Board at any time. The permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities 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 compliance if the decision is to continue conducting regulated activities, and 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.

#### 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 under R317-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(b) documenting compliance with all applicable requirements of R317-214-2, which incorporates by reference 40 CFR 63, subpart EEE), 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<sub>2</sub>) 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 HCl emission rate exceeds 1.8 kilograms of HCl per hour (4 pounds per hour), a computation of HCl 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 not 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 is 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, 2003 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 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 MALFUNCTION 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  
December 1, 2006**

**Notice of Continuation July 13, 2011**

**19-6-105**

**19-6-106**

**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;

(v) Any additional information considered necessary or proper; and

(vi) Name and address of the office processing the permit action for which notice is being given.

(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 to 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 "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**

**December 1, 2006**

**Notice of Continuation July 13, 2011**

**19-6-105**

**19-6-106**

**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 permit 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.

(i) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of R315-5-9, which incorporates by reference 40 CFR 262.200 - 262.216, are not subject to (for purposes of this paragraph, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in 40 CFR 262.200):

(1) The requirements of R315-5-1.11 or R315-5-3.34, which incorporates by reference 40 CFR 262.34(c), for large quantity generators and small quantity generators, except as provided in R315-5-9, which incorporates by reference 40 CFR 262.200 - 216, and

(2) The conditions of R315-2-5, which incorporates by

reference 40 CFR 261.5(b), for conditionally exempt small quantity generators, except as provided in R315-5-9, which incorporates by reference 40 CFR 262.200 - 216.

**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, a hazardous waste for off-site treatment, storage, or disposal or a treatment, storage, or disposal facility who offers for transport a rejected hazardous waste load shall prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and, if necessary, EPA form 8700-22A. The requirements of 40 CFR 262, Appendix, 2009 ed., are adopted and incorporated by reference with the following exception: substitute "Executive Secretary" for all federal regulation references made to "Regional Administrator."

(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 MANIFEST TRACKING NUMBERS, MANIFEST PRINTING, AND OBTAINING MANIFESTS

The requirements of 40 CFR 262.21, 2005 ed., are adopted and incorporated by reference.

#### 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.

#### 2.27 WASTE MINIMIZATION CERTIFICATION

A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

### 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 119 gallons or less used in such 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

Generator's EPA Identification Number

Manifest Tracking Number

#### 3.33 PLACARDING

Prior to transporting hazardous waste or offering hazardous waste for transportation 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. If placards are not required, a generator shall mark each motor vehicle according to 49 CFR 171.3(b)(1).

#### 3.34 ACCUMULATION TIME

(a) These requirements as found in 40 CFR 262.34, 2005 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, 2005 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, 2005 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.

#### R315-5-9. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.

The requirements of 40 CFR 262 subpart K, 262.200 - 262.216, 2009 ed., are adopted and incorporated by reference with the following exception:

substitute "Executive Secretary" for all references made to "Regional Administrator."

#### KEY: hazardous waste

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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)(1) Manifest Requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of R315-5-2.23.

(2) Exports. 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 by the generator as provided in R315-6-2.20, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest, or shipping paper for exports by water (bulk shipment). For exports of hazardous waste subject to the requirements of 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.

(3) Compliance Date for Form Revisions. The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-6-2.20, and R315-6-2.21, contained in R315-1 to R315-8, edition revised as of September 15, 2004, shall be applicable until September 5,

2006.

(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) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy as specified in R315-6-2.22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

(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)(1) If the hazardous waste cannot be delivered in accordance with R315-6-2.21(a) because of an emergency condition other than rejection of the waste by the designated facility, then the transporter shall contact the generator for further directions and shall revise the manifest according to the generator's instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter shall obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter

shall retain a copy of this manifest in accordance with R315-6-2.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter shall obtain a new manifest to accompany the shipment, and the new manifest shall include all of the information required in R315-8-5.4(e)(1) through (6) or (f)(1) through (6) or R315-7-12.3(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment shall be delivered. The transporter shall retain a copy of the manifest in accordance with R315-6-2.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter shall obtain a new manifest for the shipment and comply with R315-8-5.4(e)(1) through (6) or R315-7-12.3(e)(1) through (6).

#### 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.

**KEY: hazardous waste**

**December 1, 2006**

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**19-6-106**

**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.

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

(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**

(a) 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, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a).

(b) The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-7-12.1, R315-7-12.2, R315-7-12.3, and R315-7-12.7, contained in R315-1 to R315-8, edition revised as of September 15, 2004, shall be applicable until September 5, 2006.

#### **12.2 USE OF MANIFEST SYSTEM**

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator, or his agent, shall sign and date the manifest as indicated in R315-7-12.1(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any significant discrepancies in the manifest, as defined in R315-7-12.3, on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the

manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest to the following addresses within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460 and Utah Division of Solid and Hazardous Waste, P O Box 144880, Salt Lake City, Utah 84114-4880.

(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 or a signed and dated copy of the 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.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

#### **12.3 MANIFEST DISCREPANCIES**

(a) Manifest discrepancies are:

(1) Significant differences as defined by R315-7-12.3(b) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in R315-2-7(b).

(b) Significant discrepancies in quantity are: For bulk waste, variations greater than ten percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, 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 to the Executive Secretary a letter describing the discrepancy, and attempts to reconcile it, including a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under R315-7-12.3, it must ensure that either the delivering transporter retains custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under R315-7-12.3(e) or (f).

(e) Except as provided in R315-7-12.3(e)(7), for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of R315.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Officer's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the

manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-7-12.3(e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in R315-7-12.3(f)(7), for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Officer's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-7-12.3(f)(1), (2), (3), (4), (5), and (6).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set for in R315-2-7(b) after it has signed, date, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

#### 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, and for disposal facilities, the most recent post-closure cost estimate under R315-7-15, which incorporates by reference 40 CFR 265.144;
- (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; and
- (j) The certification signed by the owner or operator of the facility or his authorized representative.

#### 12.7 UNMANIFESTED WASTE REPORT

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in R315-6-2.20(e), and if the waste is not excluded from the manifest requirements of R315, 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:

- (1) The EPA identification number, name, and address of the facility;
- (2) The date the facility received the waste;
- (3) The EPA identification number, name, and address of the generator and the transporter, if available;
- (4) A description and the quantity of each unmanifested hazardous waste the facility received;
- (5) The method of treatment, storage, or disposal for each hazardous waste;
- (6) The certification signed by the owner or operator of the facility or his authorized representative; and
- (7) A brief explanation of why the waste was unmanifested, if known.

#### 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 265.1050 - 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 overflowing, 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 R315-7-18.2 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 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 R315-7-18.10(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

MAXIMUM CUMULATIVE

Soil cation exchange capacity (meq/100g)	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, polyisobutylene, 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, CO<sub>2</sub> 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 or 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, 2004 ed., 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 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."

#### KEY: hazardous waste

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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.

(iv) In the case of an explosives or munitions emergency response, if a State or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response

specialist's organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(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, R315-14-6, which incorporates by reference 40 CFR 266 subpart G, and R315-14-7, which incorporates by reference 40 CFR 266 subpart H; 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 unauthorized 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, data 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(1)(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**

(a) The rules in R315-8-5 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, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a). R315-8-5.3, which incorporates by reference 40 CFR 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

(b) The revised Manifest form and procedures in R315-1-1, which incorporates by reference 40 CFR 260.10, R315-2-7, R315-8-5.1, R315-8-5.2, R315-8-5.4, and R315-8-5.7, contained in R315-1 to R315-8, edition revised as of September

15, 2004, shall be applicable until September 5, 2006.

#### **5.2 USE OF MANIFEST SYSTEM**

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, shall sign and date the manifest as indicated in R315-8-5.2(a)(2) to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent shall:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies in the manifest, as defined in R315-8-5.4(a), on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the signed manifest;

(iv) Within 30 days of the delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest to the following addresses within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460 and Utah Division of Solid and Hazardous Waste, P O Box 144880, Salt Lake City, Utah 84114-4880.

(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 or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

Comment: 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.

(e) A facility shall determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities shall also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

### 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:

(1) Significant differences (as defined by R315-8-5.4(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, or disposal facility cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in R315-2-7(b).

(b) Significant discrepancies in quantity are: for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload; 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.

(c) 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.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b), the facility shall consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility shall send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under R315-8-5.4, it must ensure that either the delivering transporter retains custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under R315-8-5.4(e) or (f).

(e) Except as provided in R315-8-5.4(e)(7), for full or partial load rejections and residues that are to be sent off-site to

an alternate facility, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of R315.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Officer's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility shall retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-8-5.4(e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in R315-8-5.4(f)(7), for rejected wastes and residues that shall be sent back to the generator, the facility is required to prepare a new manifest in accordance with R315-5-2.20(a) and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Officer's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked, and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The



facility shall retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility shall use a new manifest and comply with R315-8-5.4(f)(1), (2), (3), (4), (5), and (6).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set for in R315-2-7(b) after it has signed, date, and returned a copy of the manifest to the delivering transporter or to the generator, the facility shall amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility shall also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and shall re-sign and date the manifest to certify to the information as amended. The facility shall retain the amended manifest for at least three years from the date of amendment, and shall within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

#### 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 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 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

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in R315-6-2.20(e)(2), and if the waste is not excluded from the manifest requirement of R315, then the owner or operator shall prepare and submit a letter to the Executive Secretary within 15 days of the receipt of the waste. The unmanifested waste report shall include the following information:

(1) The EPA identification number, name, and address of the facility;

(2) The date of receipt of the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

#### 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 soils 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 underlying 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 underlying 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

CONSTITUENT	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	(C10H10Cl8, 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

TABLE 1  
Maximum Concentration of Constituents for Groundwater Protection

MAXIMUM

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 underlying 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).

(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 "Executive Secretary" for all references made to "Regional Administrator".

(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 R315-8-11.5(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  $1 \times 10^{-7}$  /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  $1 \times 10^{-1}$  /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  $3 \times 10^{-4}$  /m<sup>2</sup>sec 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 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.

(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  $1 \times 10^{-7}$  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  $1 \times 10^{-2}$  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  $3 \times 10^{-5}$  m<sup>2</sup>/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 compounds, 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 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.

(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		Annual Cd Application Rate (kilograms per hectare)
Time Period		
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 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.

(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  $1 \times 10^{-7}$  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  $1 \times 10^{-2}$  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  $3 \times 10^{-5}$  m<sup>2</sup>/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 nonbiodegradable under the Organization for Economic Cooperation and Development (OECD) test 301B, CO<sub>2</sub> 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 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 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 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 R315-8-14.13(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 do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit 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(d), 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 40 CFR 63.1206(b)(14) and 63.1219(e).

(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 (HCl) shall control HCl 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 HCl 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.

January 15, 2010

Notice of Continuation July 13, 2011

19-6-105

19-6-106

**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, 2004 ed., 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 July 30, 1993 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."

**KEY: hazardous waste**

**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.

**KEY: hazardous waste**

**December 15, 1995**

**Notice of Continuation July 13, 2011**

**19-6-105**

**19-6-106**

**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, 2001 ed., as amended by 65 FR 67068, November 8, 2000; 65 FR 81373, December 26, 2000; 66 FR 27266, May 16, 2001; 66 FR 58258, November 20, 2001; 67 FR 17119, April 9, 2002; 67 FR 62618, October 7, 2002; 67 FR 48393, July 24, 2002; and 70 FR 9138, February 24, 2005, are adopted and incorporated by reference including Appendices III, 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****January 15, 2010****19-6-106****Notice of Continuation July 13, 2011****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, 2003 ed., 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, 2008 ed., are adopted and incorporated by reference.

**R315-14-8. Military Munitions.**

For purposes of 19-6-102(17)(a), a used or fired military munition is a solid waste, and, therefore, is potentially subject to 19-6-105(1)(d) and 19-6-112, or imminent and substantial endangerment authorities under 19-6-115 if the munition lands off-range and is not promptly rendered safe or retrieved or both. Any imminent and substantial threats associated with any remaining material shall be addressed. If remedial action is infeasible, the operator of the range shall maintain a record of the event for as long as any threat remains. The record shall include the type of munition and its location, to the extent the location is known.

**KEY: hazardous waste**

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**19-6-105**

**19-6-106**

**R315. Environmental Quality, Solid and Hazardous Waste.  
R315-17. End of Life Automotive Mercury Switch Removal Standards.**

**R315-17-1. Purpose.**

(a) The purpose of this rule is to provide for the administration of the Mercury Switch Removal Act, Utah Code Annotated 19-6-1001, et seq.

(b) The Mercury Switch Removal Act and this Rule require the removal of mercury switches from vehicles that have reached the end of their useful life.

**R315-17-2. Applicability.**

This rule applies to:

- (a) manufacturers of vehicles sold in the State of Utah;
- (b) vehicles that may contain one or more mercury switches;
- (c) mercury switches; and
- (d) persons removing mercury switches from vehicles.

**R315-17-3. Definitions.**

Terms used in this rule are defined in Utah Code Annotated 19-6-1002.

**R315-17-4. Mercury Switch Collection Plan.**

(a) Manufacturers of any vehicle sold within the State of Utah shall submit a plan individually or in cooperation with other manufacturers to the Executive Secretary of the Utah Solid and Hazardous Waste Control Board for review and approval by January 15, 2007. This submission shall be accompanied by a filing fee as established by the legislature in the Department of Environmental Quality fee schedule. The Executive Secretary shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(b) The Executive Secretary shall review and approve or disapprove the submitted plan based on the requirements outlined in R315-17-4(d). If the plan is not approved, the Executive Secretary shall provide comments to the manufacturer within 60 days of submission of the plan. The manufacturer shall address all comments from the Executive Secretary and submit an amended plan within 90 days after the Executive Secretary provides comments on the unapproved plan.

(c) A manufacturer shall ensure that plan implementation occurs by July 1, 2007.

(d) The mercury switch collection plan shall include:

- (1) The make, model, and year of any vehicle, including current and anticipated future production models, sold by a manufacturer that may contain one or more mercury switches;
- (2) The description and location of each mercury switch for each make, model, and year of vehicle;
- (3) Procedures for the prompt reimbursement by a manufacturer of costs incurred by a person removing and collecting mercury switches without regard to the date on which the mercury switch is removed and collected;

(4) Information addressing safe and environmentally sound methods for mercury switch removal and information about hazards related to mercury and the proper handling of mercury;

(5) Methods for the storage and disposal of mercury switches, including packaging and shipping of mercury switches to an authorized recycling, storage, or disposal facility; and

(6) Procedures for the transfer of information among persons involved with the plan to comply with reporting requirements.

(e) If a manufacturer does not know or is uncertain about whether or not a switch contains mercury, the plan shall presume that the switch contains mercury.

**R315-17-5. Mercury Switch Removal Costs.**

(a) Manufacturers shall implement procedures for the prompt reimbursement of costs incurred by a person removing

and collecting mercury switches without regard to the date on which the mercury switch is removed and collected.

(b) To ensure that the costs of removal and collection of mercury switches are not borne by any other person, the manufacturers of vehicles sold in the state shall pay:

(1) A minimum of \$5 for each mercury switch removed by a person as partial compensation for the labor and other costs incurred in removing the mercury switch;

(2) The cost of packaging necessary to store or transport mercury switches to recycling, storage, or disposal facilities;

(3) The cost of shipping mercury switches to recycling, storage, or disposal facilities;

(4) The cost of recycling, storage, or disposal of mercury switches;

(5) The cost of the preparation and distribution of educational materials; and

(6) The cost of maintaining all appropriate record keeping systems.

**R315-17-6. Public Participation.**

The Executive Secretary shall also provide public notice, a public comment period, and public hearing(s) for each proposed Mercury Switch Collection Plan in accordance with R315-4-1.10 through R315-4-1.12 and R315-4-1.17.

**R315-17-7. Plan Amendments.**

The Executive Secretary may require a manufacturer to modify the plan at any time upon finding that an approved plan as implemented has failed to meet the requirements of this rule.

**R315-17-8. Reporting Requirements.**

(a) Each manufacturer that is required to implement a mercury switch collection plan shall submit, either individually or in cooperation with other manufacturers, an annual report on the plan's implementation to the Executive Secretary by October 1 of each year, beginning in 2008.

(b) The annual report shall include:

- (1) The number of mercury switches collected;
- (2) The number of mercury switches for which the manufacturer has provided reimbursement;
- (3) A description of the successes and failures of the plan;
- (4) A discussion of how the failures of the plan have been or will be corrected; and
- (5) A statement detailing the costs required to implement the plan.

**R315-17-9. Penalties.**

In accordance with 19-6-1006, a manufacturer who fails to submit, modify, or implement a plan according to R315 may be subject to a civil penalty of not more than \$1,000 per day per violation.

**R315-17-10. Administrative Proceedings.**

Administrative proceedings under the Mercury Switch Removal Act and this Rule shall be conducted in accordance with R315-12.

**KEY: hazardous waste  
December 1, 2006  
Notice of Continuation July 13, 2011**

**9-6-1003**

**R315. Environmental Quality, Solid and Hazardous Waste.**

**R315-50. Appendices.**

**R315-50-1. Reserved.**

Reserved.

**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., as amended by FR 70 9138, February 24, 2005, 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., as amended by FR 70 9138, February 24, 2005, 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**

<b>January 15, 2010</b>	<b>19-6-106</b>
<b>Notice of Continuation July 13, 2011</b>	<b>19-6-108</b>
	<b>19-6-105</b>

**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  $1 \times 10^{-6}$  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  $1 \times 10^{-6}$  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  $1 \times 10^{-6}$  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  $1 \times 10^{-6}$  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  $1 \times 10^{-6}$  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  $1 \times 10^{-4}$  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  $1 \times 10^{-6}$  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  $1 \times 10^{-4}$  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**

**Notice of Continuation July 13, 2011**

**19-6-105**

**19-6-106**

**R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.**

**R359-1. Pete Suazo Utah Athletic Commission Act Rule.**

**R359-1-101. Title.**

This Rule is known as the "Pete Suazo Utah Athletic Commission Act Rule."

**R359-1-102. Definitions.**

In addition to the definitions in Title 63C, Chapter 11, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) "Unprofessional conduct" is as defined in Subsection 63C-11-302(25), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV, Hepatitis B or C;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

(h) providing false or misleading information to the Commission or a representative of the Commission;

(i) behaving at any time or place in a manner which is deemed by the Commission to reflect discredit to unarmed combat;

(j) engaging in any activity or practice that is detrimental to the best interests of unarmed combat;

(k) knowing that an unarmed contestant suffered a serious injury prior to a contest or exhibition and failing or refusing to inform the Commission about that serious injury.

(l) conviction of a felony or misdemeanor, except for minor traffic violations.

(7) A "training facility" is a location where ongoing, scheduled training of unarmed combat contestants is held.

**R359-1-201. Authority - Purpose.**

The Commission adopts this Rule under the authority of Subsection 63C-11-304(1)(b), to enable the Commission to administer Title 63C, Chapter 11, of the Utah Code.

**R359-1-202. Scope and Organization.**

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R359-1-101 through R359-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R359-1-601 through R359-1-623 shall apply only to contests of boxing, as defined in Subsection R359-1-102(1).

The provisions of Sections R359-1-701 through R359-1-702 shall apply only to elimination tournaments, as defined in R359-1-102(4). The provisions of Section R359-1-801 shall apply only to martial arts contest and exhibitions. The provisions of Section 859-1-901 shall apply only to "White-Collar Contests". The provisions of Sections R359-1-1001 through R359-1-1004 shall apply only to grants for amateur boxing.

**R359-1-301. Qualifications for Licensure.**

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is a promoter, timekeeper, manager, contestant, second, matchmaker, referee, or judge.

(2) A licensed amateur MMA contestant shall not compete against a professional unarmed combat contestant, or receive a purse and/or other remuneration (other than for reimbursement for reasonable travel expenses, consistent with IRS guidelines).

(3) A licensed manager or contestant shall not hold a license as a referee or judge.

(4) A promoter shall not hold a license as a referee, judge, or contestant.

**R359-1-302. Licensing - Procedure.**

In accordance with the authority granted in Section 63C-11-309, the expiration date for licenses issued by the Commission shall be one year from the date of issuance.

**R359-1-401. Designation of Adjudicative Proceedings.**

(1) Formal Adjudicative Proceedings. The following proceedings before the Commission are designated as formal adjudicative proceedings:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license;

(b) approval or denial of applications for renewal of a license;

(c) any proceedings conducted subsequent to the issuance of a cease and desist order; and

(d) the withholding of a purse by the Commission pursuant to Subsection 63C-11-321(3).

(2) Informal Adjudicative Proceedings. The following proceedings before the Commission are designated as informal adjudicative proceedings:

(a) approval or denial of applications for initial licensure;

(b) approval or denial of applications for reinstatement of a license; and

(c) protests against the results of a match.

(3) Any other adjudicative proceeding before the Commission not specifically listed in Subsections (1) and (2) above, is designated as an informal adjudicative proceeding.

**R359-1-402. Adjudicative Proceedings in General.**

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R359-1-404.

(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure.

(5) The Commission shall be designated as the sole presiding officer in any adjudicative proceeding where no evidentiary hearing is conducted. The Commission shall be

designated as the presiding officer to serve as the fact finder at evidentiary hearings.

(6) A majority vote of the Commission shall constitute its decision. Orders of the Commission shall be issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be signed by the Director or, in his or her absence, by the Chair of the Commission.

**R359-1-403. Additional Procedures for Immediate License Suspension.**

(1) In accordance with Subsection 63C-11-310(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

(2) The suspension shall be at such time and for such period as the Commission believes is necessary to protect the health, safety, and welfare of the licensee, other licensees, or the public.

(3) A licensee whose license has been immediately suspended may, within 30 days after the decision of the designated Commission member, challenge the suspension by submitting a written request for a hearing. The Commission shall convene the hearing as soon as is reasonably practical but not later than 20 days from the receipt of the written request, unless the Commission and the party requesting the hearing agree to conduct the hearing at a later date.

**R359-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.**

(1) A request for an evidentiary hearing in an informal adjudicative proceeding shall be submitted in writing no later than 20 days following the issuance of the Commission's notice of agency action if the proceeding was initiated by the Commission, or together with the request for agency action, if the proceeding was not initiated by the Commission, in accordance with the requirements set forth in the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

(3) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in an informal adjudicative proceeding.

**R359-1-405. Reconsideration and Judicial Review.**

Agency review is not available as to any order or decision entered by the Commission. However, any person aggrieved by an adverse determination by the Commission may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Utah Administrative Procedures Act or seek judicial review of the order pursuant to Sections 63-46b-14 through 63-46b-17.

**R359-1-501. Promoter's Responsibilities in Arranging a Contest.**

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a

contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of \$10,000, or total sum of the contestant purses, officials fees and estimated commission fees, whichever is greater. Promoters who have held less than 5 unarmed combat events in the state of Utah shall deposit an additional \$10,000 minimum Cashier's Check or Bank Draft with the commission no later than 7 days prior to the event or the event may be cancelled by the commission.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the funds necessary for payment of contestants, referees, judges, timekeeper and the attending physician(s). The designated Commission member shall pay each contestant, referee, and judge in the presence of one witness.

(9) A promoter shall be not under the influence of alcohol or controlled substances during the contest and until all purses to the contestants and all applicable fees are paid to the commission, officials and ringside physician.

(10) The promoter shall be responsible for payment of any commission fee(s) deducted from a contestant's purse, if the fees are not collected directly from the contestant at the conclusion of the bout or if the contestant fails to compete in the event.

(11) At the time of an unarmed combat contest weigh-in, the promoter of a contest shall provide primary insurance coverage for each uninsured contestant and secondary insurance for each insured contestant in the amount of \$10,000 for each licensed contestant to provide medical, surgical and hospital care for licensed contestants who are injured while engaged in a contest or exhibition:

(a) The term of the insurance coverage must not require the contestant to pay a deductible, for the medical, surgical or hospital care for injuries he sustains while engaged in a contest of exhibition.

(b) If a licensed contestant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the contestant or his beneficiaries as reimbursement for the payment.

(c) The promoter shall also provide life insurance coverage of \$10,000 for each contestant in case of death.

(d) The required medical insurance and life insurance coverage can not be waived by the contestant or any other party.

(e) A contestant seeking medical insurance reimbursement for injuries sustained during an unarmed combat event shall obtain medical treatment for their injuries within 72 hours of their bout and maintain written records of their treatment, expenses and correspondence with the insurance provider and promoter to ensure coverage.

(12) In addition to the payment of any other fees and money due under this part, the promoter shall pay the following event fees:

(a)(i) \$200 for a contest or event occurring in a venue of fewer than 500 attendees;

(ii) \$300 for a contest or event occurring in a venue of at least 500 attendees but fewer than 1,000 attendees;

(iii) \$400 for a contest or event occurring in a venue of at least 1,000 attendees but fewer than 3,000 attendees;

(iv) \$600 for a contest or event occurring in a venue of at least 3,000 attendees but fewer than 5,000 attendees;

(v) \$1000 for a contest or event occurring in a venue of at least 5,000 attendees but fewer than 10,000 attendees; or

(vi) \$2000 for a contest or event occurring in a venue of at least 10,000 attendees; and

(b) 3% of the first \$500,000, and one percent of the next \$1,000,000, of the total gross receipts from the sale, lease, or other exploitation of internet, broadcasting, television, and motion picture rights for any contest or exhibition thereof, without any deductions for commissions, brokerage fees, distribution fees, advertising, contestants' purses or any other expenses or charges, except in no case shall the fee be more than \$25,000. The promoter shall notify and provide the commission with certified copies of any contracts, agreements or transfers of any internet, broadcasting, television, and motion picture rights for any contest or exhibition within seven days of any such agreements. The commission may require a surety deposit be provided to the commission to ensure these requirements are met.

(c) the applicable fees assessed by the Association of Boxing Commission designated official record keeper.

(d) the commission may exempt from the payment of all or part of the assessed fees under this section for a special contest or exhibition based on factors which include:

- (i) a showcase event promoting a greater interest in contests in the state;
  - (ii) attraction of the optimum number of spectators;
  - (iii) costs of promoting and producing the contest or exhibition;
  - (iv) ticket pricing;
  - (v) committed promotions and advertising of the contest or exhibition;
  - (vi) rankings and quality of the contestants; and
  - (vii) committed television and other media coverage of the contest or exhibition.
- (viii) contribution to a 501(c)(3) charitable organization.

#### **R359-1-502. Ringside Equipment.**

- (1) Each promoter shall provide all of the following:
- (a) commission-approved gloves in whole, clean and in sanitary condition for each contestant;
  - (b) stools for use by the seconds;
  - (c) rubber gloves for use by the referees, seconds, ringside physicians, and Commission representatives;
  - (d) a stretcher, which shall be available near the ring and near the ringside physician;
  - (e) a portable resuscitator with oxygen;
  - (f) an ambulance with attendants on site at all times when contestants are competing. Arrangements shall be made for a replacement ambulance if the first ambulance is required to transport a contestant for medical treatment. The location of the ambulance and the arrangements for the substitute ambulance service shall be communicated to the physician;
  - (g) seats at ringside for the assigned officials;
  - (h) seats at ringside for the designated Commission member;
  - (i) ring (cage) cleaning supplies, including bucket, towels and disinfectant;
  - (j) a public address system;
  - (k) a separate dressing room for each sex, if contestants of both sexes are participating;
  - (l) a separate room for physical examinations;
  - (m) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site

make an additional dressing room impossible;

(n) adequate security personnel; and

(o) sufficient bout sheets for ring officials and the designated Commission member.

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the county, city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms, for physical examinations or weigh-ins.

#### **R359-1-503. Contracts.**

(1) Pursuant to Section 63C-11-320, a copy of the contract between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.

(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.

(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.

(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

#### **R359-1-504. Complimentary Tickets.**

(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.

(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 63C-11-311(1).

(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.

(c) Pursuant to Subsection 63C-11-311(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.

(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.

(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:

- (i) the Commission members, Director and representatives;
- (ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and
- (iii) holders of lifetime passes issued by the Commission.

(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:

(i) Any of the promoter's employees, and if the promoter is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;

(ii) Employees of the Commission;

(iii) A journalist who is performing a journalist's duties; and

(iv) A fireman or police officer that is performing the duties of a fireman or police officer.

(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:

(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;

(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;

(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;

(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;

(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the program.

(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.

(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.

(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

#### **R359-1-505. Physical Examination - Physician.**

(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

(a) eyes;

(b) teeth;

(c) jaw;

(d) neck;

(e) chest;

(f) ears;

(g) nose;

(h) throat;

(i) skin;

(j) scalp;

(k) head;

(l) abdomen;

(m) cardiopulmonary status;

(n) neurological, musculature, and skeletal systems;

(o) pelvis; and

(p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify

the Commission of this determination, and the Commission shall prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

#### **R359-1-506. Drug Tests.**

In accordance with Section 63C-11-317, the following shall apply to drug testing:

(1) The administration of or use of any:

(a) Alcohol;

(b) Illicit drug;

(c) Stimulant; or

(d) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R359-1-506 (2), in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited for any unarmed combatant pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1-506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug identified on the 2011 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The 2008 edition of the Prohibited List may be obtained, free of charge, at [www.wada-ama.org](http://www.wada-ama.org).

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission for any unarmed combatant:

(a) Aspirin and products containing aspirin.

(b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

(a) Antacids, such as Maalox.

(b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

(e) Antinauseants, such as Dramamine or Tigan.

(f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceril.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

(o) The following decongestants:

(i) Afrin;

(ii) Oxymetazoline HCL Nasal Spray; or

(iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1) or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a licensee shall submit to a test of body fluids to determine the presence of drugs. A licensee shall give an adequate sample or it will deem to be a denial. The promoter shall be responsible for any costs of testing.

(6) If the test results in a finding of the presence of a drug or if the licensee is unable or unwilling to provide a sample of body fluids for such a test, the Commission may take one or more of the following actions:

(a) immediately suspend the licensee's license in accordance with Section R359-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

(7) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."

(8) Unless the commission determines otherwise at a scheduled meeting, a licensee who tests positive for illegal drugs shall be penalized as follows:

(a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

#### **R359-1-507. HIV Testing.**

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is HIV negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HIV

test was completed within 180 days prior to the contest.

(3) Any contestant whose HIV test is positive shall be prohibited from participating in a contest.

#### **R359-1-508. Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody Testing.**

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within one year prior to the contest. The period may be reduced by the commission to protect public safety in the event of an outbreak.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

#### **R359-1-509. Contestant Use or Administration of Any Substance.**

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretionary use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretionary use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

#### **R359-1-510. Weighing-In.**

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighted more than once for any cause deemed sufficient by the

commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative: or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

**R359-1-511. Event Officials.**

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges, timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

(2) Event officials are prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an event official shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an event official who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

(3) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

(4) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

(5) The Judges, Referee(s) and Timekeeper officiating at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total fees set by the Commission for all officials whom the Commission approves to officiate in a contest or exhibition.

(7) Event Officials' Minimum Fee Schedule:

TABLE			
NUMBER OF BOUTS	REFEREE	JUDGE	TIMEKEEPER
1-5	\$100.00	\$50.00	\$35.00
>5	\$100.00	\$100.00	\$50.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

**R359-1-512. Announcer.**

(1) The promoter may select the event announcer.

(2) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(3) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to

begin, and shall also announce the changes made in officials as the contest progresses.

(4) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

(3) An announcer shall not engage in unprofessional conduct.

(4) The announcer is prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an announcer shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an announcer who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

**R359-1-513. Timekeeper.**

(1) A timekeeper shall indicate the beginning and end of each round by the gong.

(2) A timekeeper shall possess a whistle and a stopwatch.

(3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.

(4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.

(5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

**R359-1-514. Stopping a Contest.**

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

(1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:

(a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

(d) refusal or inability of a contestant to comply with the rules of the contest.

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

**R359-1-515. Competing in an Unsanctioned Unarmed Combat Event.**

(1) The Commission shall deny issuing a license to a contestant who has competed in an unarmed combat event not



sanctioned by an Association of Boxing Commission (ABC) member commission for a period of 60 days from the date of the event.

(2) Unarmed combat contestants who are currently licensed by the Commission shall not be approved to compete in an unarmed combat event until 60 days from the date of their last competition in an unarmed combat event not sanctioned by an ABC member commission.

(3) After competing in an unsanctioned unarmed combat event, a contestant must submit new blood tests results drawn within 30 days of their scheduled event.

**R359-1-601. Boxing - Contest Weights and Classes.**

(1) Boxing weights and classes are established as follows:

- (a) Strawweight: up to 105 lbs. (47.627 kgs.)
- (b) Light-Flyweight: over 105 to 108 lbs. (47.627 to 48.988 kgs.)
- (c) Flyweight: over 108 to 112 lbs. (48.988 to 50.802 kgs.)
- (d) Super Flyweight: over 112 to 115 lbs. (50.802 to 52.163 kgs.)
- (e) Bantamweight: over 115 to 118 lbs. (52.163 to 53.524 kgs.)
- (f) Super Bantamweight: over 118 to 122 lbs. (53.524 to 55.338 kgs.)
- (g) Featherweight: over 122 to 126 lbs. (55.338 to 57.153 kgs.)
- (h) Super Featherweight: over 126 to 130 lbs. (57.153 to 58.967 kgs.)
- (i) Lightweight: over 130 to 135 lbs. (58.967 to 61.235 kgs.)
- (j) Super Lightweight: over 135 to 140 lbs. (61.235 to 63.503 kgs.)
- (k) Welterweight: over 140 to 147 lbs. (63.503 to 66.678 kgs.)
- (l) Super Welterweight: over 147 to 154 lbs. (66.678 to 69.853 kgs.)
- (m) Middleweight: over 154 to 160 lbs. (69.853 to 72.574 kgs.)
- (n) Super Middleweight: over 160 to 168 lbs. (72.574 to 76.204 kgs.)
- (o) Light-heavyweight: over 168 to 175 lbs. (76.204 to 79.378 kgs.)
- (p) Cruiserweight: over 175 to 200 lbs. (79.378 to 90.80 kgs.)
- (q) Heavyweight: all over 200 lbs. (90.80 kgs.)

(2) A contestant shall not fight another contestant who is outside of the contestant's weight classification unless prior approval is given by the Commission.

(3) A contestant who has contracted to box in a given weight class shall not be permitted to compete if he or she exceeds that weight class at the weigh-in, unless the contract provides for the opposing contestant to agree to the weight differential. If the weigh-in is held the day before the contest and if the opposing contestant does not agree or the contract does not provide for a weight exception, the contestant may have two hours to attempt to lose not more than three pounds in order to be reweighed.

(4) The Commission shall not allow a contest in which the contestants are not fairly matched. In determining if contestants are fairly matched, the Commission shall consider all of the following factors with respect to the contestant:

- (a) the win-loss record of the contestants;
- (b) the weight differential;
- (c) the caliber of opponents;
- (d) each contestant's number of fights; and
- (e) previous suspensions or disciplinary actions.

**R359-1-602. Boxing - Number of Rounds in a Bout.**

- (1) A contest bout shall consist of not less than four and

not more than twelve scheduled rounds. Three minutes of boxing shall constitute a round for men's boxing, and two minutes shall constitute a round for women's boxing. There shall be a rest period of one minute between the rounds.

(2) A promoter shall contract with a sufficient number of contestants to provide a program consisting of at least 30 and not more than 56 scheduled rounds of boxing, unless otherwise approved by the Commission.

**R359-1-603. Boxing - Ring Dimensions and Construction.**

(1) The ring shall be square, and the sides shall not be less than 16 feet nor more than 22 feet. The ring floor shall extend not less than 18 inches beyond the ropes. The ring floor shall be padded with a base not less than 5/8 of an inch of ensolite or another similar closed-cell foam. The padding shall extend beyond the ring ropes and over the edge of the platform, and shall be covered with canvas, duck, or a similar material that is tightly stretched and laced securely in place.

(2) The ring floor platform shall not be more than four feet above the floor of the building, and shall have two sets of suitable stairs for the use of contestants, with an extra set of suitable stairs to be used for any other activities that may occur between rounds. Ring posts shall be made of metal and shall be not less than three nor more than four inches in diameter, extending a minimum of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.

(3) The ring shall not have less than four ring ropes which can be tightened and which are not less than one inch in diameter. The ring ropes shall be wrapped in a soft material. The turnbuckles shall be covered with a protective padding. The ring ropes shall have two spacer ties on each side of the ring to secure the ring ropes. The lower ring rope shall be 18 inches above the ring floor. The ring shall have corner pads in each corner.

**R359-1-604. Boxing - Gloves.**

(1) A boxing contestant's gloves shall be examined before a contest by the referee and the designated Commission member. If gloves are found to be broken or unclean or if the padding is found to be misplaced or lumpy, they shall be changed before the contest begins.

(2) A promoter shall be required to have on hand an extra set of gloves that are to be used if a contestant's gloves are broken or damaged during the course of a contest.

(3) Gloves for a main event may be put on in the ring after the referee has inspected the bandaged hands of both contestants.

(4) During a contest, male contestants shall wear gloves weighing not less than eight ounces each if the contestant weighs 154 lbs. (69.853 kgs.) or less. Contestants who weigh more than 154 lbs. (69.853 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the wrist of the gloves and shall be secured. The tips of the laces shall be removed.

**R359-1-605. Boxing - Bandage Specification.**

(1) Except as agreed to by the managers of the contestants opposing each other in a contest, a contestant's bandage for each hand shall consist of soft gauze not more than 20 yards long and not more than two inches wide. The gauze shall be held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide. The adhesive tape must be white or a light color.

(2) Bandages shall be adjusted in the dressing room under the supervision of the designated Commission member.

(3) The use of water or any other substance other than medical tape on the bandages is prohibited.

(4) The bandages and adhesive tape may not extend to the knuckles, and must remain at least three-fourths of an inch away from the knuckles when the hand is clenched to make a fist.

**R359-1-606. Boxing - Mouthpieces.**

A round shall not begin until the contestant's form-fitted protective mouthpiece is in place. If, during a round, the mouthpiece falls out of the contestant's mouth, the referee shall, as soon as practicable, stop the bout and escort the contestant to his corner. The mouthpiece shall be rinsed out and replaced in the contestant's mouth and the contest shall continue. If the referee determines that the contestant intentionally spit the mouthpiece out, the referee may direct the judges to deduct points from the contestant's score for the round.

**R359-1-607. Boxing - Contest Officials.**

(1) The officials for each boxing contest shall consist of not less than the following:

- (a) one referee;
- (b) three judges;
- (c) one timekeeper; and
- (d) one physician licensed in good standing in Utah.

(2) A licensed referee, judge, or timekeeper shall not officiate at a contest that is not conducted under the authority or supervision of the designated Commission member.

(3) A referee or judge shall not participate or accept an assignment to officiate when that assignment may tend to impair the referee's or judge's independence of judgment or action in the performance of the referee's or judge's duties.

(4) A judge shall be seated midway between the ring posts of the ring, but not on the same side as another judge, and shall have an unimpaired view of the ring.

(5) A referee shall not be assigned to officiate more than 32 scheduled rounds in one day, except when substituting for another referee who is incapacitated.

(6) A referee shall not wear jewelry that might cause injury to the contestants. Glasses, if worn, shall be protective athletic glasses or goggles with plastic lenses and a secure elastic band around the back of the head.

(7) Referees, seconds working in the corners, the designated Commission member, and physicians may wear rubber gloves in the performance of their duties.

(8) No official shall be under the influence of alcohol or controlled substances while performing the official's duties.

**R359-1-608. Boxing - Contact During Contests.**

(1) Beginning one minute before the first round begins, only the referee, boxing contestants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(2) Once a contest has begun, only the referee, contestants, seconds, judges, Commission representatives, physician, the announcer and the announcer's assistants shall be allowed in the ring.

(3) At any time before, during or after a contest, the referee may order that the ring and technical area be cleared of any individual not authorized to be present in those areas.

(4) The referee, on his own initiative, or at the request of the designated Commission member, may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the manager or second of a contestant, the referee may disqualify the contestant or order the deduction of points from that contestant's score. If the conduct occurred after the decision was announced, the

Commission may change the decision, declare no contest, or pursue disciplinary action against any licensed individual involved in the disruptive conduct.

**R359-1-609. Boxing - Referees.**

(1) The chief official of a boxing contest shall be the referee. The referee shall decide all questions arising in the ring during a contest that are not specifically addressed in this Rule.

(2) The referee shall, before each contest begins, determine the name and location of the physician assigned to officiate at the contest and each contestant's chief second.

(3) At the beginning of each contest, the referee shall summon the contestants and their chief seconds together for final instructions. After receiving the instructions, the contestants shall shake hands and retire to their respective corners.

(4) Where difficulties arise concerning language, the referee shall make sure that the contestant understands the final instructions through an interpreter and shall use suitable gestures and signs during the contest.

(5) No individual other than the contestants, the referee, and the physician when summoned by the referee, may enter the ring or the apron of the ring during the progress of a round.

(6) If a contestant's manager or second steps into the ring or onto the apron of the ring during a round, the fight shall be halted and the referee may eject the manager or second from the ringside working area. If the manager or second steps into the ring or onto the apron a second time during the contest, the fight may be stopped and the decision may be awarded to the contestant's opponent due to disqualification.

(7) A referee shall inspect a contestant's body to determine whether a foreign substance has been applied.

**R359-1-610. Boxing - Stalling or Faking.**

(1) A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If after proper warning, the referee determines the contestant is continuing to stall or pull his punches, the referee shall stop the bout at the end of the round.

(2) A referee may consult the judges as to whether or not the contestant is stalling or faking and shall abide by a majority decision of the judges.

(3) If the referee determines that either or both contestants are stalling or faking, or if a contestant refuses to fight, the referee shall terminate the contest and announce a no contest.

(4) A contestant who, in the opinion of the referee, intentionally falls down without being struck shall be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant.

**R359-1-611. Boxing - Injuries and Cuts.**

(1) When an injury or cut is produced by a fair blow and because of the severity of the blow the contest cannot continue, the injured boxing contestant shall be declared the loser by technical knockout.

(2) If a contestant intentionally fouls his opponent and an injury or cut is produced, and due to the severity of the injury the contestant cannot continue, the contestant who commits the foul shall be declared the loser by disqualification.

(3) If a contestant receives an intentional butt or foul and the contest can continue, the referee shall penalize the contestant who commits the foul by deducting two points. The referee shall notify the judges that the injury or cut has been produced by an intentional unfair blow so that if in the subsequent rounds the same injury or cut becomes so severe that the contest has to be suspended, the decision will be awarded as follows:

(a) a technical draw if the injured contestant is behind on points or even on a majority of scorecards; and

(b) a technical decision to the injured contestant if the injured contestant is ahead on points on a majority of the scorecards.

(4) If a contestant injures himself trying to foul his opponent, the referee shall not take any action in his favor, and the injury shall be considered as produced by a fair blow from his opponent.

(5) If a contestant is fouled accidentally during a contest and can continue, the referee shall stop the action to inform the judges and acknowledge the accidental foul. If in subsequent rounds, as a result of legal blows, the accidental foul injury worsens and the contestant cannot continue, the referee shall stop the contest and declare a technical decision with the winner being the contestant who is ahead on points on a majority of the scorecards. The judges shall score partial rounds. If a contestant is accidentally fouled in a contest and due to the severity of the injury the contestant cannot continue, the referee shall rule as follows:

(a) if the injury occurs before the completion of four rounds, declare the contest a technical draw; or

(b) if the injury occurs after the completion of four rounds, declare that the winner is the contestant who has a lead in points on a majority of the scorecards before the round of injury. The judges shall score partial rounds.

(6) If in the opinion of the referee, a contestant has suffered a dangerous cut or injury, or other physical or mental condition, the referee may stop the bout temporarily to summon the physician. If the physician recommends that the contest should not continue, the referee shall order the contest to be terminated.

(7) A fight shall not be terminated because of a low blow. The referee may give a contestant not more than five minutes if the referee believes a foul has been committed. Each contestant shall be instructed to return to his or her respective corner by the referee. The contestants may sit in their respective corners with their mouthpiece removed. After removing their contestant's mouthpiece, the seconds must return to their seats. The seconds may not coach, administer water, or in any other way attend to their contestant, except to replace the mouthpiece when the round is ready to resume.

(8) If a contestant is knocked down or given a standing mandatory count of eight or a combination of either occurs three times in one round, the contest shall be stopped and a technical knockout shall be awarded to the opponent. The physician shall immediately enter the ring and examine the losing contestant.

(9) A physician shall immediately examine and administer aid to a contestant who is knocked out or injured.

(10) When a contestant is knocked out or rendered incapacitated, the referee or second shall not handle the contestant, except for the removal of a mouthpiece, unless directed by the physician to do so.

(11) A contestant shall not refuse to be examined by a physician.

(12) A contestant who has been knocked out shall not leave the site of the contest until one hour has elapsed from the time of the examination or until released by the physician.

(13) A physician shall file a written report with the Commission on each contestant who has been knocked out or injured.

#### **R359-1-612. Boxing - Knockouts.**

(1) A boxing contestant who is knocked down shall take a minimum mandatory count of eight.

(2) If a boxing contestant is dazed by a blow and, in the referee's opinion, is unable to defend himself, the referee shall give a standing mandatory count of eight or stop the contest. If on the count of eight the boxing contestant, in the referee's opinion, is unable to continue, the referee may count him out on his feet or stop the contest on the count of eight.

(3) In the event of a knockdown, the timekeeper shall immediately start the count loud enough to be heard by the referee, who, after waving the opponent to the farthest neutral corner, shall pick up the count from the timekeeper and proceed from there. The referee shall stop the count if the opponent fails to remain in the corner. The count shall be resumed when the opponent has returned to the corner.

(4) The timekeeper shall signal the count to the referee.

(5) If the boxing contestant taking the count is still down when the referee calls the count of ten, the referee shall wave both arms to indicate that the boxing contestant has been knocked out. The referee shall summon the physician and shall then raise the opponent's hand as the winner. The referee's count is the official count.

(6) If at the end of a round a boxing contestant is down and the referee is in the process of counting, the gong indicating the end of the round shall not be sounded. The gong shall only be sounded when the referee gives the command to box indicating the continuation of the bout.

(7) In the final round, the timekeeper's gong shall terminate the fight.

(8) A technical knockout decision shall be awarded to the opponent if a boxing contestant is unable or refuses to continue when the gong sounds to begin the next round. The decision shall be awarded in the round started by the gong.

(9) The referee and timekeeper shall resume their count at the point it was suspended if a boxing contestant arises before the count of ten is reached and falls down again immediately without being struck.

(10) If both boxing contestants go down at the same time, counting will be continued as long as one of them is still down or until the referee or the ringside physician determines that one or both of the boxing contestants needs immediate medical attention. If both boxing contestants remain down until the count of ten, the bout will be stopped and the decision will be scored as a double knockout.

#### **R359-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.**

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open

for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R359-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.

**R359-1-614. Boxing - Waiting Periods.**

(1) The number of days that shall elapse before a boxing contestant who has competed anywhere in a bout may participate in another bout shall be as follows:

Length of Bout (In scheduled Rounds)	Required Interval (In Days)
4	3
5-9	5
10-12	7

**R359-1-615. Boxing - Fouls.**

(1) A referee may disqualify or penalize a boxing contestant by deducting one or more points from a round for the following fouls:

- (a) holding an opponent or deliberately maintaining a clinch;
- (b) hitting with the head, shoulder, elbow, wrist, inside or butt of the hand, or the knee.
- (c) hitting or gouging with an open glove;
- (d) wrestling, spinning or roughing at the ropes;
- (e) causing an opponent to fall through the ropes by means other than a legal blow;
- (f) gripping at the ropes when avoiding or throwing punches;
- (g) intentionally striking at a part of the body that is over

the kidneys;

- (h) using a rabbit punch or hitting an opponent at the base of the opponent's skull;
- (i) hitting on the break or after the gong has sounded;
- (j) hitting an opponent who is down or rising after being down;
- (k) hitting below the belt line;
- (l) holding an opponent with one hand and hitting with the other;
- (m) purposely going down without being hit or to avoid a blow;
- (n) using abusive language in the ring;
- (o) un-sportsmanlike conduct on the part of the boxing contestant or a second whether before, during, or after a round;
- (p) intentionally spitting out a mouthpiece;
- (q) any backhand blow; or
- (r) biting.

**R359-1-616. Boxing - Penalties for Fouling.**

(1) A referee who penalizes a boxing contestant pursuant to this Rule shall notify the judges at the time of the infraction to deduct one or more points from their scorecards.

(2) A boxing contestant committing a deliberate foul, in addition to the deduction of one or more points, may be subject to disciplinary action by the Commission.

(3) A judge shall not deduct points unless instructed to do so by the referee.

(4) The designated Commission member shall file a complaint with the Commission against a boxing contestant disqualified on a foul. The Commission shall withhold the purse until the complaint is resolved.

**R359-1-617. Boxing - Contestant Outside the Ring Ropes.**

(1) A boxing contestant who has been knocked, wrestled, pushed, or has fallen through the ropes during a contest shall not be helped back into the ring, nor shall the contestant be hindered in any way by anyone when trying to reenter the ring.

(2) When one boxing contestant has fallen through the ropes, the other contestant shall retire to the farthest neutral corner and stay there until ordered to continue the contest by the referee.

(3) The referee shall determine if the boxing contestant has fallen through the ropes as a result of a legal blow or otherwise. If the referee determines that the boxing contestant fell through the ropes as a result of a legal blow, he shall warn the contestant that the contestant must immediately return to the ring. If the contestant fails to immediately return to the ring following the warning by the referee, the referee shall begin the count that shall be loud enough to be heard by the contestant.

(4) If the boxing contestant enters the ring before the count of ten, the contest shall be resumed.

(5) If the boxing contestant fails to enter the ring before the count of ten, the contestant shall be considered knocked out.

(6) When a contestant has accidentally slipped or fallen through the ropes, the contestant shall have 20 seconds to return to the ring.

**R359-1-618. Boxing - Scoring.**

(1) Officials who score a boxing contest shall use the 10-point must system.

(2) For the purpose of this Rule, the "10-point must system" means the winner of each round received ten points as determined by clean hitting, effective aggressiveness, defense, and ring generalship. The loser of the round shall receive less than ten points. If the round is even, each boxing contestant shall receive not less than ten points. No fraction of points may be given.

(3) Officials who score the contest shall mark their cards in ink or in indelible pencil at the end of each round.

(4) Officials who score the contest shall sign their scorecards.

(5) When a contest is scored on the individual score sheets for each round, the referee shall, at the end of each round, collect the score sheet for the round from each judge and shall give the score sheets to the designated Commission member for computation.

(6) Referees and judges shall be discreet at all times and shall not discuss their decisions with anyone during a contest.

(7) A decision that is rendered at the termination of a boxing contest shall not be changed without a hearing, unless it is determined that the computation of the scorecards of the referee and judges shows a clerical or mathematical error giving the decision to the wrong contestant. If such an error is found, the Commission may change the decision.

(8) After a contest, the scorecards collected by the designated Commission member shall be maintained by the Commission.

(9) If a referee becomes incapacitated, a time-out shall be called and the other referee who is assigned to the contest shall assume the duties of the referee.

(10) If a judge becomes incapacitated and is unable to complete the scoring of a contest, a time-out shall be called and an alternate licensed judge shall immediately be assigned to score the contest from the point at which he assumed the duties of a judge. If the incapacity of a judge is not noticed during a round, the referee shall score that round and the substitute judge shall score all subsequent rounds.

#### **R359-1-619. Boxing - Seconds.**

(1) A boxing contestant shall not have more than four seconds, one of whom shall be designated as the chief second. The chief second shall be responsible for the conduct in the corner during the course of a contest. During the rest period, one second shall be allowed inside the ring, two seconds shall be allowed on the apron and one second shall be allowed on the floor.

(2) All seconds shall remain seated during the round.

(3) A second shall not spray or throw water on a boxing contestant during a round.

(4) A boxing contestant's corner shall not heckle or in any manner annoy the contestant's opponent or the referee, or throw any object into the ring.

(5) A second shall not enter the ring until the timekeeper has indicated the end of a round.

(6) A second shall leave the ring at the timekeeper's whistle and shall clear the ring platform of all obstructions at the sound of the gong indicating the beginning of a round. Articles shall not be placed on the ring floor until the round has ended or the contest has terminated.

(7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R359-1-609(6) and R359-1-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.

(8) A second may indicate to the referee that the second's boxing contestant cannot continue and that the contest should be stopped. Only verbal notification or hand signals may be used; the throwing of a towel into the ring does not indicate the defeat of the second's boxing contestant.

(9) A second shall not administer alcoholic beverages, narcotics, or stimulants to a contestant, pour excessive water on the body of a contestant, or place ice in the trunks or protective cup of a contestant during the progress of a contest.

#### **R359-1-620. Boxing - Managers.**

A manager shall not sign a contract for the appearance of a boxing contestant if the manager does not have the boxing contestant under contract.

#### **R359-1-621. Boxing. Identification - Photo Identification Cards.**

(1) Each boxing contestant shall provide two pieces of identification to the designated Commission member before participation in a fight. One of the pieces of identification shall be a recent photo identification card issued or accepted by the Commission at the time the boxing contestant receives his original license.

(2) The photo identification card shall contain the following information:

(a) the contestant's name and address;

(b) the contestant's social security number;

(c) the personal identification number assigned to the contestant by a boxing registry;

(d) a photograph of the boxing contestant; and

(e) the contestant's height and weight.

(3) The Commission shall honor similar photo identification cards from other jurisdictions.

(4) Unless otherwise approved by the Commission, a boxing contestant will not be allowed to compete if his or her photo identification card is incomplete or if the boxing contestant fails to present the photo identification card to the designated Commission member prior to the bout.

#### **R359-1-622. Boxing - Dress for Contestants.**

(1) Boxing contestants shall be required to wear the following:

(a) trunks that are belted at the contestant's waistline. For the purposes of this Subsection, the waistline shall be defined as an imaginary horizontal line drawn through the navel to the top of the hips. Trunks shall not have any buckles or other ornaments on them that might injure a boxing contestant or referee;

(b) a foul-proof protector for male boxing contestants and a pelvic area protector and breast protector for female boxing contestants;

(c) shoes that are made of soft material without spikes, cleats, or heels;

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R359-1-604.

(2) In addition to the clothing required pursuant to Subsections R359-1-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

(3) A boxing contestant's hair shall be cut or secured so as not to interfere with the contestant's vision.

(4) A boxing contestant shall not wear corrective lenses other than soft contact lenses into the ring. A bout shall not be interrupted for the purposes of replacing or searching for a soft contact lens.

#### **R359-1-623. Boxing - Failure to Compete.**

A boxing contestant's manager shall immediately notify the Commission if the contestant is unable to compete in a contest due to illness or injury. A physician may be selected as approved by the Commission to examine the contestant.

#### **R359-1-701. Elimination Tournaments.**

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R359-1 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the sport. Upon requesting the

Commission's approval of an elimination tournament in this State, the sponsoring organization or promoter of an elimination tournament may submit the official rules for the particular sport to the Commission and request the Commission to apply the official rules in the contest.

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

#### **R359-1-702. Restrictions on Elimination Tournaments.**

Elimination tournaments shall comply with the following restrictions:

(1) An elimination tournament must begin and end within a period of 48 hours.

(2) All matches shall be scheduled for no more than three rounds. A round must be one minute in duration.

(3) A contestant shall wear 16 oz. boxing gloves, training headgear, a mouthpiece and a large abdominal groin protector during each match.

(4) A contestant may participate in more than one match, but a contestant shall not compete more than a total of 12 rounds.

(5) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of contestants, a physical examination on each contestant, conducted by a physician not more than 60 days prior to the elimination tournament in a form provided by the Commission, certifying that the contestant is free from any physical or mental condition that indicates the contestant should not engage in activity as a contestant.

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R359-1-507 of this Rule and Subsection 63C-11-317(1).

(7) The Commission may impose additional restrictions in advance of an elimination tournament.

#### **R359-1-801. Martial Arts Contests and Exhibitions.**

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 63C, Chapter 11, and Rule R359-1 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the art. Upon requesting the Commission's approval of a contest or exhibition of a martial art in this State, the sponsoring organization or promoter may submit the official rules for the particular art to the Commission and request the Commission to apply the official rules in the contest or exhibition.

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R359-1.

#### **R359-1-802. Martial Arts Contest Weights and Classes.**

Martial Arts Contest Weights and Classes:

(a) flyweight is up to and including 125 lbs. (56.82 kgs.);

(b) bantamweight is over 125 lbs. (56.82 kgs.) to 135 lbs. (61.36 kgs.);

(c) featherweight is over 135 lbs. (61.36 kgs.) to 145 lbs. (65.91 kgs.);

(d) lightweight is over 145 lbs. (65.91 kgs.) to 155 lbs. (70.45 kgs.);

(e) welterweight is over 155 lbs. (70.45 kgs.) to 170 lbs. (77.27 kgs.);

(f) middleweight is over 170 lbs. (77.27 kgs.) to 185 lbs. (84.09 kgs.);

(g) light-heavyweight is over 185 lbs. (84.09 kgs.) to 205 lbs. (93.18 kgs.);

(h) heavyweight is over 205 lbs. (93.18 kgs.) to 265 lbs. (120.45 kgs.); and

(i) super heavyweight is over 265 lbs. (120.45 kgs.).

#### **R359-1-901. "White-Collar Contests".**

Pursuant to Section 63C-11-302 (26), the Commission adopts the following rules for "White-Collar Contests":

(1) Contestants shall be at least 21 years old on the day of the contest.

(2) Competing contestants shall be of the same gender.

(3) The heaviest contestant's weight shall be no greater than 15 percent more than their opponent.

(4) A ringside physician (M.D. or D.O) must be present at the ringside or cageside during each bout and emergency medical response must be within 5 minutes to the training center venue.

(5) Ticket sales, admission fees and/or donations are prohibited.

(6) Concession sales are prohibited.

(7) No more than 4 bouts at an event on a single day are permitted.

(8) Knee strikes to the head to a standing or grounded opponent are prohibited.

(9) Elbow, forearm and triceps strikes to a standing or grounded opponent are prohibited.

(10) Strikes to the head of a grounded opponent are prohibited.

(11) All twisting leg submissions are prohibited.

(12) All spine attacks, including spine strikes and locks are prohibited.

(13) All neck attacks, including strikes, chokes and cranks are prohibited.

(14) Linear kicks to and around the knee joint are prohibited.

(15) Dropping your opponent on his or her head or neck at any time is prohibited.

(16) Medical insurance coverage for each contest participant that meets the requirements of R359-1-501(10) shall be provided at no expense to the contest participant.

(17) Full legal names, birthdates and addresses of all contestants shall be provided to the commission no later than 72 hours before the scheduled event.

#### **R359-1-1001. Authority - Purpose.**

These rules are adopted to enable the Commission to implement the provisions of Section 63C-11-311 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

#### **R359-1-1002. Definitions.**

Pursuant to Section 63C-11-311, the Commission adopts the following definitions:

(1) For purposes of Subsection 63C-11-311, "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

(2) "Applicant" means an Organization Which Promotes Amateur Boxing in the State as defined in this section.

(3) "Grant" means the Commission's distribution of

monies as authorized under Section 63C-11-311(3).

(4) "Organization Which Promotes Amateur Boxing in the State" means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

(5) "State Fiscal Year" means the annual financial reporting period of the State of Utah, beginning July 1 and ending June 30.

**R359-1-1003. Qualifications for Applications for Grants for Amateur Boxing.**

(1) In accordance with Section 63C-11-311, each applicant for a grant shall:

(a) submit an application in a form prescribed by the Commission;

(b) provide documentation that the applicant is an "organization which promotes amateur boxing in the State";

(c) Upon request from the Commission, document the following:

(i) the financial need for the grant;

(ii) how the funds requested will be used to promote amateur boxing; and

(iii) receipts for expenditures for which the applicant requests reimbursement.

(2) Reimbursable Expenditures - The applicant may request reimbursement for the following types of eligible expenditures:

(a) costs of travel, including meals, lodging and transportation associated with participation in an amateur boxing contest for coaches and contestants;

(b) Maintenance costs; and

(c) Equipment costs.

(3) Eligible Expenditures - In order for an expenditure to be eligible for reimbursement, an applicant must:

(a) submit documentation supporting such expenditure to the Commission showing that the expense was incurred during the State Fiscal Year at issue; and

(b) submit such documentation no later than June 30 of the current State Fiscal Year at issue.

(4) the Commission will review applicants and make a determination as to which one(s) will best promote amateur boxing in the State of Utah.

**R359-1-1004. Criteria for Awarding Grants.**

The Commission may consider any of the following criteria in determining whether to award a grant:

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 63C-11-311;

(2) the applicant's past participation in amateur boxing contests;

(3) the scope of the applicant's current involvement in amateur boxing;

(4) demonstrated need for the funding; or

(5) the involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

**KEY: licensing, boxing, unarmed combat, white-collar contests**

July 26, 2011

63C-11-101 et seq.

Notice of Continuation May 10, 2007

**R380. Health, Administration.****R380-70. Standards for Electronic Exchange of Clinical Health Information.****R380-70-1. Purpose and Authority.**

This rule governs electronic information exchanges between health care providers, laboratories, and third party payers. It is authorized by Sections 26-1-30 and 26-1-37.

**R380-70-2. Definitions.**

The terms defined in Utah Code 26-1-37 apply to this rule and the standards adopted by this rule. In addition, the following terms apply to this rule and the standards adopted by this rule:

- (1) "Clinical health information" means data gathered on patients regarding episodes of clinical health care.
- (2) "Clinical laboratory" means a laboratory that performs laboratory testing on humans (except research) in the U.S.
- (3) "Health care provider" has the same meaning as used in Utah Code Section 26-1-37 and includes an entity, such as a clinic, employer, or other business arrangement, where an individual licensed under Title 58, Occupations and Professions, provides health care.

**R380-70-3. Terms Used in Standards.**

Some terms used in this rule and the standards adopted by this rule are nationally recognized terms within the clinical data exchange community. The following are provided as an aid to the reader:

- (1) Health care information codes
  - (a) "ASA Codes" are the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.
  - (b) "CDT Codes" are the Current Dental Terminology prescribed by the American Dental Association.
  - (c) "CPT Codes" means the Current Procedural Terminology, published by the American Medical Association.
  - (d) "HCPCS" are CMS's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's Current Procedural Terminology codes, alphanumeric codes, and related modifiers. HCPCS codes are:
    - (i) "HCPCS Level I Codes" are the CPT codes and modifiers for professional services and procedures.
    - (ii) "HCPCS Level II Codes" are national alphanumeric codes and modifiers for health care products and supplies, and codes for professional services not included in the AMA's CPT codes.
    - (e) "ICD-CM Codes" are the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.
    - (f) "LOINC" means Logical Observation Identifiers Names and Codes. It is a set of universal codes and names to identify laboratory and other clinical observations developed by the Regenstrief Institute.
    - (g) "NDC" means the National Drug Codes of the Food and Drug Administration.
    - (h) "SNOMED" means Systematized Nomenclature of Medicine maintained and distributed by the International Health Terminology Standards Development Organisation. It is a systematically organized computer processable collection of medical terminology.
- (2) Electronic Data Interchange Standards
  - (a) "ASC X12N" are standard formats developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides either as promulgated or

as modified by another federally registered SDO;

(b) "HL7" are electronic data interchange standard formats developed by Health Level 7, which is a standards development organization accredited by the American National Standards Institute. The HL7 standard is usually modified into specific implementation guides by a separate standards development organization;

(c) "NCPDP" are standard formats for the transfer of data to and from the pharmacy services sector of the healthcare industry. It is developed by the National Council on Prescription Drug Program, which is a standards development organization accredited by the American National Standards Institute.

**R380-70-4. Electronic Exchange Requirements.**

(1) A health care provider or third party payer that exchanges information electronically with another health care provider or third party payer must comply with the provisions of this rule.

(2) A person required to report information to the Utah Department of Health and that submits its report electronically shall submit the report in accordance with the provisions of this rule.

(3) A health care provider or third party payer may reject electronically transmitted clinical information if it is not transmitted in accordance with this rule.

**R380-70-5. Exemptions.**

(1) This rule does not govern the exchange of information that is not conducted electronically or for which no standard has been established in this rule.

(2) This rule does not apply to the exchange of clinical health information among affiliates, as provided in 26-1-37, within a health care system.

(3) Nothing in this rule requires a health care provider or third party payer to use a specific telecommunications network for the exchange of clinical health information.

**R380-70-6. Electronic Data Interchange Standards.**

Standards incorporated by reference in this rule are available for public inspection at the department during normal business hours or at <http://health.utah.gov/phi/index.php?formname=laws>.

(1) A health care provider, a clinical laboratory, or third-party payer that electronically exchanges clinical health information with another health care provider, a clinical laboratory, or third-party payer must comply with the following Utah Health Information Network standards:-

- (a) Discharge Summary v2.0, March 4, 2009;
- (b) History and Physical v2.0, March 4, 2009;
- (c) Chief Complaint v2.0, March 15, 2009;
- (d) Operative Report v2.0, June 15, 2009;
- (e) Clinical Acknowledgement and Error Status v2.0, June 15, 2009;
- (f) Laboratory Test Result Identifiers v2.0, September 5, 2009;
- (g) Clinical Laboratory Results v2.0, September 30, 2009;
- (h) Radiology Report v2.0, June 21, 2010, which are incorporated by references.

**R380-70-7. Standards Recommendations.**

A party that recommends standards to the Department, shall seek guidance and work with national standard setting entities, such as the American National Standards Institute ASC X12, Health Level 7, and the National Council on Prescription Drug Program, that deal with the particular subject matter.

**KEY: standards, clinical health information exchange  
July 5, 2011 26-1-30**



26-1-37

**R426. Health, Family Health and Preparedness, Emergency Medical Services.****R426-16. Emergency Medical Services Ambulance Rates and Charges.****R426-16-1. Authority and Purpose.**

- (1) This rule is established under Title 26, Chapter 8a.
- (2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ambulance services in the State of Utah.

**R426-16-2. Ambulance Transportation Rates and Charges.**

- (1) Licensed services operating under R426-15 shall not charge more than the rates described in this rule. In addition, the net income of licensed services, including subsidies of any type, shall not exceed the net income limit set by this rule.
  - (a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.
  - (b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.
  - (c) An agency may not charge a transportation fee for patients who are not transported.
    - (2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the department to be submitted as detailed under R426-16-2(9). This data shall then be used as the basis for the annual rate adjustment.
    - (3) Base Rates for ground transport to care facility -
      - (a) Ground Ambulance - \$569.00 per transport.
      - (b) Intermediate Ground Ambulance - \$752.00 per transport.
      - (c) Paramedic Ground Ambulance - \$1,100.00 per transport.
      - (d) Ground Ambulance with Paramedic on-board - \$1,100.00 per transport if:
        - (i) a dispatch agency dispatches a paramedic licensee to treat the individual;
        - (ii) the paramedic licensee has initiated advanced life support;
        - (iii) on-line medical control directs that a paramedic remain with the patient during transport; and
        - (iv) an ambulance service that interfaces with a paramedic rescue service and has an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to a maximum of \$234.71 per transport.
    - (4) Mileage Rate-
      - (a) \$31.65 per mile or fraction thereof.
      - (b) In all cases mileage shall be computed from the point of pickup to the point of delivery.
      - (c) A fuel fluctuation surcharge of \$0.25 per mile may be added when diesel fuel prices exceed \$5.10 per gallon or gasoline exceeds \$4.25 as invoiced.
    - (5) Surcharge-
      - (a) If the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of \$1.50 per mile may be assessed.
    - (6) Special Provisions -
      - (a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:
        - (i) Each patient will be assessed the transportation rate.
        - (ii) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.
      - (b) A round trip may be billed as two one-way trips.
      - (c) An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter.

On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

- (7) Supplies and Medications -
  - (a) An ambulance licensee may charge for supplies and providing supplies, medications, and administering medications used on any response if:
    - (i) supplies shall be priced fairly and competitively with similar products in the local area;
    - (ii) the individual does not refuse services; and
    - (iii) the ambulance personnel assess or treats the individual.
  - (8) Uncontrollable Cost Escalation -
    - (a) In the event of a temporary escalation of costs, an ambulance service may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.
      - (b) The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.
    - (9) Operating report -
      - (a) The licensed service shall file with the Department within 90 days of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.
      - (10) Fiscal audits -
        - (a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established.
        - (b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.

**R426-16-3. Penalty for Violation of Rule.**

As required by Subsection 63G-3-201(5): Any person that violates any provisions of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY: emergency medical services, ambulance rates  
July 26, 2011**

**Notice of Continuation July 28, 2009**

**26-8a**

**R512. Human Services, Child and Family Services.****R512-205. Child Protective Services, Investigation of Domestic Violence Related Child Abuse.****R512-205-1. Purpose and Authority.**

(1) The purpose of this rule is to establish criteria for investigation of an allegation of Domestic Violence Related Child Abuse and the basis upon which a supported finding will be made.

(2) This rule is authorized by Section 62A-4a-102.

**R512-205-2. Definitions.**

(1) "Cohabitant" has the same meaning as in Section 78B-7-102.

(2) "Dangerous weapon" has the same meaning as in Section 76-1-601.

(3) "Child and Family Services" means the Department of Human Services, Division of Child and Family Services.

(4) "Domestic violence" has the same meaning as in Section 77-36-1.

(5) "Domestic Violence Related Child Abuse" means domestic violence between cohabitants in the presence of a child. It may be an isolated incident or a pattern of conduct.

(6) "In the presence of a child" has the same meaning as in Section 76-5-109.1.

(7) "Serious bodily injury" has the same meaning as in Section 76-1-601.

(8) "Substantial bodily injury" has the same meaning as in Section 76-1-601.

**R512-205-3. Administrative Findings.**

(1) The commission of acts of domestic violence in the presence of a child is child abuse, because it results in non-accidental harm or threatened harm to the child. Such abuse is subject to the reporting statute (Section 62A-4a-403).

(2) Research establishes that exposure to domestic violence causes emotional or developmental harm or threatened harm to children, which may later be manifested in behavioral problems, increased risk of drug or alcohol abuse, increased risk of becoming perpetrators or victims of abuse, or in emotional disorders such as post-traumatic stress disorder.

(3) Exposure to domestic violence may also threaten a child with physical harm.

(4) Awaiting the manifestation of emotional or developmental harm does not protect children from such harm, and early intervention is required to mitigate and prevent further harm.

(5) Accordingly, establishing the commission of an act of domestic violence in the presence of a child shall be sufficient to establish Domestic Violence Related Child Abuse, without any further evidence of harm.

(6) The primary responsibility to investigate allegations of Domestic Violence Related Child Abuse as defined in Section 76-5-109.1 lies with law enforcement, and Child and Family Services has no responsibility to investigate domestic violence in the presence of a child as described in that section, except as provided in this rule (see Section 62A-4a-105(6)).

**R512-205-4. Investigation.**

(1) An allegation of Domestic Violence Related Child Abuse, that meets all other requirements for acceptance, shall be accepted by Child and Family Services for investigation if it is alleged that a child was physically present or saw or heard an incident of domestic violence and:

(a) The alleged perpetrator used or threatened to use a dangerous weapon; or

(b) The alleged perpetrator threatened to cause substantial or serious bodily injury; or

(c) The alleged victim sustained substantial or serious bodily injury; or

(d) There is a pattern of two or more CPS investigations of Domestic Violence Related Child Abuse within the previous two years; or

(e) Another allegation of abuse, neglect, or dependency is being accepted or is in the process of being investigated.

**R512-205-5. Investigation Findings.**

(1) Upon completion of an investigation of Domestic Violence Related Child Abuse, a supported finding may be based upon the definitions of this rule.

**KEY: child abuse, domestic violence  
July 28, 2011**

**62A-4a-102  
62A-4a-105  
76-5-109.1**

**R523. Human Services, Substance Abuse and Mental Health.****R523-20. Division Rules of Administration.****R523-20-1. Authority.**

(1) This rule establishes procedures and standards for administration of substance abuse and mental health services as granted by Subsection 62A-15-105(5).

**R523-20-2. Purpose.**

(1) The purpose of this rule is to:

- (a) establish a continuum of substance abuse standards;
- (b) clarify funding for Medical detoxification programs;

and

- (c) establish the Addiction Severity Index as the instrument used for determining a persons severity of substance abuse.

**R523-20-5. Continuum of Services.**

(1) Prevention means a proactive comprehensive program which provides a broad array of activities and services designed to discourage the use of alcohol, tobacco and other drugs directed at individuals who have not been identified to be in need of treatment. These activities and services must be provided in a variety of settings for both the general population as well as targeted subgroups who are at high risk for substance abuse.

(2) Treatment means those services which target individuals or families who are functionally impaired psychologically, physically, or socially in association with the patterned abuse of or dependence on alcohol, tobacco, or other drugs. This includes only those individuals upon whom a written consumer record, as defined in licensing standards (Rule R501-2-5B) as adopted by the Division of Substance Abuse and Mental Health, is maintained.

**R523-20-6. Funding of Medical Detoxification Programs.**

(1) Medical detoxification programs shall not be funded by the Division on an ongoing basis.

**R523-20-11. Use of Standard Criteria.**

(1) All contractors and subcontractors must conduct a thorough bio-psycho-social-cultural assessment of each client to determine the degree of severity of their substance abuse problem. This assessment must evaluate the client's status in a minimum of the following dimensions:

- (a) substance abuse status;
- (b) treatment history;
- (c) legal status;
- (d) educational and employment status;
- (e) family and social status;
- (f) mental health/psychiatric status;
- (g) cultural status; and
- (h) readiness to change.

(2) The placement decisions for all patients treated in programs funded by or contracting with the Division of Substance Abuse and Mental Health or subcontracted to any local authority shall be based upon the placement criteria developed by the American Society of Addictive Medicine (ASAM).

(3) Documentation of the use of ASAM placement criteria must be included in each patient's record.

**KEY: substance abuse, financing of programs, service continuum, assessment instruments**

**July 12, 2011**

**62A-15-105(5)**

**Notice of Continuation June 5, 2007**

**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 employs 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, last four digits of the person's 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;

(j) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play; and

(k) recognition of beverages containing alcohol including examples of such beverages.

#### **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.

(2) All online training courses shall be provided on a secure website.

#### **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 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

**KEY: off-premise, training, seminars  
September 10, 2009  
Notice of Continuation July 13, 2011**

**62A-15-105(5)  
62A-15-401**

**R590. Insurance Administration.****R590-246. Professional Employer Organization (PEO) License Application Rule.****R590-246-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority granted the insurance commissioner by Subsection 31A-2-201(3)(a) and the specific authority granted by Sections 31A-40-103 and 31A-40-302 through 31A-40-306.

**R590-246-2. Purpose and Scope.**

(1) The purpose of this rule is to establish:

- (a) a licensing process;
- (b) license application forms; and

(c) other requirements which the commissioner deems necessary for the regulation of professional employer organizations.

(2) This rule applies to all professional employer organization license applicants, all licensed professional employer organizations, and any unlicensed person doing the business of a professional employer organization in Utah.

**R590-246-3. Definitions.**

(1) The definitions in Sections 31A-1-301 and 31A-40-102 apply to this rule.

(2) "Fully insured" as used in 31A-40-208 means a health benefit plan for which 100% of the liability has been assumed by an insurance company or health maintenance organization authorized to conduct business in Utah.

(a) The health benefit plan may include a layer of financial responsibility for claims assumed by the PEO as long as the insurance company or health maintenance organization is responsible for 100% of the PEO's liability in the event of non-payment by the PEO.

(b) The covered individual must be entitled to make a claim for payment directly to the insurance company or health maintenance organization.

(c) A fully insured plan may have co-pay or deductible requirements as required by contract.

**R590-246-4. Initial and Renewal Licensing Process.**

(1) All professional employer organization types must comply with the appropriate statutory requirements and complete and submit the appropriate initial or renewal license application form and any supporting documents to the commissioner.

(2) The initial or renewal application form, and all attachments must be submitted electronically via:

(a) a PDF attachment to an email - the preferred method; or

(b) an electronic facsimile.

(3) Renewal applications are due September 30th of each year.

(4)(a) Pay the initial license fee by check submitted to the address shown at the bottom of the last page of the application form at [www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html](http://www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html). Checks not drawn on the professional employer organization must be referenced to the organization.

(b) Pay renewal fees in accordance with the instructions issued with the renewal invoice.

(5) A professional employer organization applicant that was not registered with the Division of Professional Licensing, Utah Department of Commerce prior to May 4, 2008, is a new applicant and must:

(a) submit a new application;

(b) pay the license fee by check submitted to the address on the Department's webpage at [www.insurance.gov](http://www.insurance.gov). Checks not drawn on the Professional Employer Organization must be referenced to the organization.

(6) Professional employer types for initial and renewal licenses:

(a) Professional Employer Organization - Not CERTIFIED Through An Assurance Organization.

(i) Comply with the requirements in Sections 31A-40-205, 31A-40-302 and 31A-40-305.

(ii) Complete the Professional Employer Organization - Not Certified Through An Assurance Organization license application form posted on the Department's webpage at [www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html](http://www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html).

(iii) The requirement in 31A-40-302(2)(g) will be satisfied by completing and submitting the UCAA Biographical Affidavit form posted on the Department's webpage at [www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html](http://www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html).

(b) Professional Employer Organization - CERTIFIED Through An Assurance Organization.

(i) Comply with the requirements in Section 31A-40-303.

(ii) Complete the Professional Employer Organization - Certified Through An Assurance Organization license application form posted on the Department's webpage at [www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html](http://www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html).

(c) Professional Employer Organization - Small Operation License.

(i) Comply with the requirements in Section 31A-40-304.

(ii) Complete the Professional Employer Organization - Small Operation License application form posted on the Department's webpage at [www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html](http://www.insurance.utah.gov/insurers/ProfessionalEmployerOrganization.html).

(d) Professional Employer Organization Group.

(i) Comply with the requirements in Section 31A-4-306.

(ii) Complete the appropriate Professional Employer Organization license application:

(A) Professional Employer Organization - Not Certified Through An Assurance Organization;

(B) Professional Employer Organization - Certified Through An Assurance Organization; or

(C) Professional Employer Organization - Small Operation License.

**R590-246-5. Enforcement Date.**

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

**R590-246-6. Severability.**

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 this rule and its application to other persons and circumstances are not effected.

**KEY: professional employer organization licensing**

June 27, 2011

31A-2-201

31A-40-103

31A-40-302

31A-40-304

**R623. Lieutenant Governor, Elections.****R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.****R623-1-1. Purpose.**

Pursuant to Utah Code Section 36-11-404 this rule provides procedures for the lieutenant governor's office to:

- A. Issue lobbyist licenses;
- B. Disapprove lobbyist applications;
- C. Suspend and revoke lobbyist licenses;
- D. Reinstate lobbyist licenses; and
- E. Appoint administrative law judges.

**R623-1-2. Authority.**

This rule is required by Utah Code Section 36-11-404.

**R623-1-3. Definitions.**

In addition to the terms defined in Utah Code Section 36-11-102, the following definitions apply:

- A. "Director" means the director of the state elections office.
- B. "Register" means the process of obtaining a lobbying license as required by Sections 36-11-103 and 36-11-105.
- C. "Report" means any report required under Sections 36-11-201.

**R623-1-4. Registration/License Application Procedure.**

A. In order to register and obtain a license, a lobbyist shall:

1. Pay the registration fee as required by 36-11-103 and successfully complete the training as required by 36-11-307.

2. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:

- (a) Submit the completed form to the lieutenant governor's office; or
- (b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;
2. Approve or disapprove the registration/license application; and
3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section 36-11-103(4)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-103(4)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid.

1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.

2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.

3. If a lobbyist has surrendered the license and then decides to reengage in lobbying activities, a reissued license

without a fee may be requested, if it is within the 2-year period of the original registration.

4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.

5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).

E. A lobbyist may add and delete principals and provide other notices electronically as prescribed by the lieutenant governor's office.

**R623-1-5. Disapproval of Application.**

A. A lobbyist who is convicted of violation of any of the offenses listed in Utah Code Section 36-11-103, shall have his application for license disapproved by the lieutenant governor's office and a license will not be issued.

B. The lobbyist will receive written notice of the license disapproval from the lieutenant governor's office within 30 days.

**R623-1-6. Suspensions, Revocations and Fines.**

A. Registration and reporting violations.

1. In addition to any fines imposed under 36-11-401, a lobbyist license may be suspended for any of the following willful and knowing violations of Section 36-11-103, Sections 36-11-201:

- a. Failure to register;
- b. Failure to file a year end or supplemental report on or before the statutory due date;
- c. Failure to file a year end or supplemental report;
- d. Filing a report or other document that contains materially false information or the omission of material information; including, but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor;
- e. Failure to update a registration when a lobbyist accepts a new client for lobbying; or
- f. Otherwise violating Sections 36-11-103, 36-11-201.

2. If a fine or other penalty is imposed more than once under the immediately preceding section, suspension or permanent revocation of the lobbyist license shall be imposed.

3. The determination of the penalty to be imposed will be made by following the procedures as provided by Section R623-1-7.

B. Illegal Activities of lobbyists.

1. If the lieutenant governor's office discovers or receives evidence of a possible violation of Sections 36-11-301 to 305, the evidence will be sent to the appropriate county attorney or district attorney's office for prosecution.

2. If a lobbyist is convicted of a violation of Sections 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305 or 36-11-403, the lieutenant governor shall revoke the lobbyist license for one year as required by Subsection 36-11-401(1) and give the lobbyist notice of the same, together with notice of the lobbyist's right to request a hearing under Section R623-1-9.

3. If the county or district attorney does not prosecute a possible violation under Sections 36-11-302 or 36-11-303, the lieutenant governor's office shall review the evidence to determine if a civil fine or suspension may be appropriate following the procedures for civil enforcement set forth in Section R623-1-7.

4. If a lobbyist is convicted of a violation of any of the Title 76 Criminal Code Sections referenced in Subsection 36-11-401(4), suspension of up to three years or permanent revocation of the lobbyist license shall be imposed, but no civil fine may be imposed. The determination of whether to revoke or suspend a lobbyist license and for what length of time shall be made following the procedures for civil enforcement as provided by Section R623-1-7.



**R623-1-7. Enforcement.**

A. Any person with evidence of a possible violation of the Lobbyist Disclosure and Regulation Act may provide such evidence to the director in the lieutenant governor's office or may file a complaint with such officer. If the evidence is of a criminal violation, the person may report the information directly to the appropriate county attorney or district attorney.

B. If the director discovers or receives evidence of a criminal violation, such evidence shall be provided to the appropriate county or district attorney and any civil enforcement actions will proceed as set forth in Subsection R623-1-6(B).

C. If the director discovers or receives evidence of a violation of a civil provision, the director will investigate the alleged violation and make a determination regarding what fine and/or suspension or revocation should be imposed, if any.

D. The director shall give notice of the recommended penalty to the lobbyist, and if a complaint was filed, to the complainant.

E. If either the lobbyist or the complainant desire to contest the recommended penalty, they or either of them may do so by requesting a hearing within fifteen (15) days of receipt of the notice of the recommended penalty. If neither file a request for a hearing within the fifteen day period, the recommended penalty will be the penalty imposed for the violation. The notice of recommended penalty shall include a notice of hearing rights.

F. The administrative law judge for the hearing is not bound by the recommended penalty and may impose a penalty greater or less than the recommended penalty, as seems justified by the evidence.

G. If a lobbyist license is suspended or revoked, the lieutenant governor's office shall remove the lobbyist's name from the official list and notify the following of such:

1. The speaker of the house of representatives;
2. The president of the senate; and
3. The governor.

**R623-1-8. Hearings, Appointment of Administrative Law Judges.**

A. Hearings will be conducted as informal adjudicative proceedings under the Administrative Procedures Act.

B. The lieutenant governor's office shall appoint administrative law judges from state agencies to act as presiding officers over adjudicative proceedings.

**R623-1-9. Reinstatement of a Lobbyist License.**

A. A lobbyist whose license is suspended or revoked may apply for reinstatement.

B. The lieutenant governor's office shall not reinstate any lobbyist license until the lobbyist pays any fines that have been imposed.

**KEY: lobbyist**

**July 11, 2011**

**Notice of Continuation April 7, 2009**

**36-11-404**

**R651. Natural Resources, Parks and Recreation.****R651-201. Definitions.****R651-201-1. Approved.**

"Approved" means approved by the commandant of the United States Coast Guard, unless the context clearly requires a different meaning. For carburetor backfire flame control devices "approved" means the device is marked with one of the following: a U.S. Coast Guard approval number; complies with Underwriters Laboratory test UL 1111; or complies with the Society of Automotive Engineers test SAE J-1928.

**R651-201-2. Sailboard.**

"Sailboard" means a wind-propelled vessel with a mast and sail that are held up by the operator who stands while operating the vessel.

**R651-201-3. Good and Serviceable Condition.**

(1) "Good and Serviceable condition" means any required equipment must be in proper operating condition; and

(a) Required labels and markings shall be intact and legible;

(b) Required equipment shall not be stored inside original packaging; and

(c) A PFD is considered to be in serviceable condition only if the following conditions are met:

(i) No PFD may exhibit deterioration that could diminish the performance of the PFD, including metal or plastic hardware used to secure the PFD on the wearer that is broken, deformed, or weakened by corrosion; webbings or straps used to secure the PFD on the wearer that are ripped, torn or which have become separated from an attachment point on the PFD; or any other rotted or deteriorated structural component that fails when tugged.

(ii) In addition to meeting the requirements of paragraph (i) of this section, no inherently buoyant PFD, including the inherently buoyant components of a hybrid inflatable PFD, may exhibit rips, tears, or open seams in fabric or coatings, that are large enough to allow the loss of buoyant material; buoyant material that has become hardened, non-resilient, permanently compressed, waterlogged, oil-soaked, or which show evidence of fungus or mildew; or loss of buoyant material or buoyant material that is not securely held in position.

(iii) In addition to meeting the requirements of paragraph (i) of this section, an inflatable PFD, including the inflatable components of a hybrid inflatable PFD, must be equipped with a properly armed inflation mechanism, complete with a full inflation medium cartridge and all status indicators showing that the inflation mechanism is properly armed, except as provided in paragraph (iv) of this section; inflatable chambers that are all capable of holding air; oral inflation tubes that are not blocked, detached or broken; a manual inflation lanyard or lever that is not inaccessible, broken or missing; and, inflator status indicators that are not broken or otherwise non-functional.

(iv) The inflation system of an inflatable PFD need not be armed when the PFD is worn inflated and otherwise meets the requirements of paragraphs (i) and (iii) of this section.

**R651-201-4. Immediately Available.**

"Immediately available" means stored in plain and open view in the area where it will be used; not obstructed, blocked or covered in any way and capable of being quickly deployed.

**R651-201-5. Readily Accessible.**

"Readily Accessible" means easily located and retrieved without searching, delay or hindrance.

**R651-201-6. Tow(ed)(ing).**

When used in watersports, "tow(ed)(ing)" means a person(s) who is being pulled behind a vessel either on a device

and attached to the vessel or has been pulled behind the vessel, is not currently attached and is surfing or riding the wake created by the vessel.

**KEY: boating, parks**

**July 27, 2011**

**Notice of Continuation January 26, 2011**

**73-18**

**R651. Natural Resources, Parks and Recreation.****R651-206. Carrying Passengers for Hire.****R651-206-1. Definitions.**

(1) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company in certifying:

(a) The verification of a license or permit applicant's vessel operation experience, appropriate first aid and CPR certificates and identifying information.

(b) The verification of an annual dockside or a five-year dry dock inspection of a vessel.

(2) "Certificate of maintenance and inspection" means a document produced by the Division and signed by a marine or vessel inspector and an agent of the outfitting company that a vessel has met the requirements of a required inspection. For float trip vessels, the certificate of maintenance and inspection will be issued to the outfitting company and not an individual vessel.

(3) "Certificate of outfitting company registration" means a document produced by the Division annually, indicating that an outfitting company is registered and in good standing with the Division.

(4) "Certifying experience" means vessel operation or river running experience obtained within ten years of the date of application for the license or permit.

(5) "CFR" means U.S. Code of Federal Regulations.

(6) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(7) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For float trip vessels, the annual dockside inspection may be performed at the company's place of business.

(8) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(9) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(10) "License" means a Utah Captain's/Guide's License or a U.S. Coast Guard Master's License.

(11) "Low capacity vessel" means a vessel with a carrying capacity of three or fewer occupants (e.g. canoe, kayak, inflatable kayak, or similar vessel).

(12) "Marine inspector" means a person who has been trained to perform a dry dock inspection and is registered with the Division as a person who is eligible to perform a dry dock inspection of a vessel.

(13) "Other rivers" means all rivers or river sections in Utah not defined in Subsection (18) of this rule as a whitewater river.

(14) "Permit" means a Utah Boat Crew Permit.

(15) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(16) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(a) Towing for hire is considered carrying passengers for hire

(b) Towing for hire does not include a person or entity performing salvage or abandoned vessel retrieval operations.

(17) "Vessel inspector" means a person who has been trained to perform a dockside inspection and is registered with the Division as a person who is eligible to perform a dockside inspection on a vessel.

(18) "Whitewater river" means the following river sections: the Green and Yampa Rivers within Dinosaur National Monument, the Green River in Desolation-Gray Canyon (Mile 96 to Mile 20), the Colorado River in Westwater Canyon, the Colorado River in Cataract Canyon, or other Division recognized whitewater rivers in other states.

(19) "Float trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A float trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

**R651-206-2. Outfitting Company Responsibilities.**

(1) Each outfitting company carrying passengers for hire on waters of this state shall register with the Division annually, prior to commencement of operation. Outfitting companies include, but are not limited to, fishing guides, waterski or sailing schools, river trip companies and tour boat operators.

(a) Outfitting company registration with the Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) Evidence of a current and valid river trip authorization(s), Special Use Permit(s), or performance contract(s) issued by an appropriate federal or state land managing agency;

(iii) Evidence of general liability insurance coverage; and

(iv) Payment of a \$150 fee for an outfitting company whose place of business is physically located within the State of Utah, or

(v) Payment of a \$200 fee for an outfitting company whose place of business is physically located outside of the State of Utah.

(b) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) Upon successful registration with the Division, the Division shall issue a certificate of outfitting company registration in the name of the outfitting company. An outfitting company shall display its certificate of outfitting company registration at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(3) An agent of an outfitting company shall certify that each license or permit applicant sponsored by the outfitting company has:

(a) Obtained the minimum levels of required vessel operation experience corresponding to the type of license or permit applied for;

(b) Obtained the appropriate first aid and CPR certificates; and

(c) Completed the prescribed application form with true and correct identifying information.

(4) An outfitting company's annual registration with the Division may be suspended, denied, or revoked for a length of time determined by the Division director, or an individual designated by the Division director, if one of the following occurs:

(a) The outfitting company's, or agent's negligence caused

personal injury or death as determined by due process of law;

(b) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(c) False or fictitious statements were certified or false qualifications were used to qualify a person to obtain a license or permit for an employee or others;

(d) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when registering with the Division;

(e) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(f) The outfitting company used a vessel operator without a valid license or permit or without the appropriate license or permit while engaging in carrying passengers for hire; or

(g) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a training log for each of its vessel operators.

(7) An outfitting company shall maintain a voyage plan and a passenger manifest, on shore, for each trip or excursion the company conducts.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) An outfitting company shall ensure that each of its vessel operators conducts a check of the vessel he or she will be operating. The vessel check shall include:

(a) Passenger count;

(b) A discussion of safety protocols and emergency operations with passengers on board the vessel.

(c) A check of the vessel's required carriage of safety equipment.

(d) A check of the vessel's communication systems;

(e) A check of the operation and control of the vessel's steering controls and propulsion system; and

(f) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(10) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(11) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a float trip vessel, that is required to be inspected in its fleet. Maintenance and inspection files shall be maintained for the duration in which the vessel is in the service of carrying passengers for hire, plus one additional year.

(12) The owner of a vessel carrying passengers for hire, shall carry general liability insurance. The insurance coverage shall be for a minimum of \$1,000,000 aggregate per incident.

(13) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's

(a) Drug free workplace policy;

(b) A passenger manifest and trip voyage plan;

(c) Trip operation logs;

(d) A vessel's maintenance and inspection files; or

(e) A vessel operator's training log.

(14) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued

certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah certificate of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first available take-out is the Montezuma Creek launch ramp/take-out.

### **R651-206-3. Utah Captain's/Guides License and Utah Boat Crew Permit.**

(1) No person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person has in his possession a valid and appropriately endorsed Utah Captain's/Guide's License or Utah Boat Crew Permit issued by the Division, or a valid and appropriately endorsed U.S. Coast Guard Master's License.

(a) When carrying passengers for hire on a motorboat on the waters of Bear Lake, Flaming Gorge or Lake Powell, the operator must have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) A Utah Captain's/Guide's License is valid on the waters of Bear Lake, Flaming Gorge, and Lake Powell when the holder is carrying or leading persons for hire on non-motorized vessels.

(c) A Utah Captain's/Guide's License or Utah Boat Crew Permit, with the appropriate whitewater river or other river endorsement, is valid when operating a vessel exiting from a river to the first appropriate and usable take-out or launch ramp on a lake or reservoir.

(d) A boat operator, carrying passengers within a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area shall comply with the guidelines for safe boat operation adopted by the management of the Migratory Bird Production Area.

(2) License and Permit Requirements.

(a) The license or permit must be accompanied by current and appropriate first aid and CPR certificates. A photocopy of both sides of the first aid and CPR certificates is allowed when carrying passengers for hire on rivers.

(b) A license with a "Lake and Reservoir Captain" endorsement is required when carrying passengers for hire on any lake or reservoir.

(c) A license with a "Tow Vessel Captain" endorsement is required when towing or assisting other vessels for hire on waters of this state.

(d) A license with a "Whitewater River guide" endorsement is required when carrying passengers for hire on any river section, including "whitewater," "other," and "flatwater" river designations.

(e) A license with an "Other River Guide" endorsement is required when carrying passengers for hire on any river or river section designated as "other" or "flatwater."

(f) A permit with a "lake and Reservoir Crew"

endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Lake and Reservoir Captain" endorsement.

(g) A permit with a "Tow Vessel Crew" endorsement is valid only when the holder is accompanied, on board the vessel, by a qualified license holder with a "Tow Vessel Captain" endorsement.

(h) A permit with a "Whitewater River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with a "Whitewater River Guide" endorsement.

(i) A permit with an "Other River Crew" endorsement is valid only when the holder is accompanied on the river trip, by a qualified license holder with either a "Whitewater River Guide" or "Other River Guide" endorsement.

(j) All Vessel Operator Permits and River Guide 1, 2, 3, and 4 Permits will expire at the end of their current term. Applications for renewal or duplicate of a Vessel Operator or River Guide Permit will be changed to the respective Utah Captain's/Guide's License or Utah Boat Crew Permit.

(k) All Boatman Permits issued by the Division are expired.

(3) Requirements to obtain a Utah Captain's/Guides License.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first license, the application, testing, and issuance of the license shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the license and first endorsement. A fee of \$10 will be charged for each additional license endorsement.

(d) The applicant shall choose from the four types of license endorsements:

(i) Lake and Reservoir Captain (LCG)

(ii) Tow Vessel Captain (TCG)

(iii) Whitewater River Guide (WCG)

(iv) Other River Guide (OCG)

(e) The applicant shall provide an original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Emergency Response" course or an equivalent course from a reputable provider whose curriculum is in accordance with the USDOT First Responder Guidelines or the Wilderness Medical Society Guidelines for Wilderness First Responder.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) A current Utah Vessel Operator Permit holder, whose permit was issued prior to January 1, 2008, and who is renewing and converting their permit to a Utah Captain's/Guide's License, is exempt from showing proof of completion of a National Association of State Boating Law Administrators (NASBLA)

approved boating safety course.

(g) The applicant shall complete a multiple-choice, written examination administered by an agent of the Division:

(i) 80 percent correct is required to pass.

(ii) In relation to the respective endorsement, the examination will have a specific focus on the carrying passengers for hire laws and rules along with general safety, etiquette and courtesy.

(iii) If an applicant fails to pass the exam, there is a seven-day waiting period to re-test.

(iv) Pay a \$15 fee for each re-test.

(h) The applicant shall provide documentation of vessel operation experience that has been obtained within 10 years previous to the date of application.

(i) Lake and Reservoir Captain (LCG) - a minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be carrying passengers for hire on the specific lake or reservoir on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Captain (TCG) - A minimum of at least 80 hours of actual vessel operation experience. At least 40 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Guide (WCG) - A minimum of nine river trips on whitewater river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river section on which the operator will be carrying passengers for hire. A Whitewater River Guide endorsement meets the requirements for an Other River Guide endorsement.

(iv) Other River Guide (OCG) - A minimum of six river trips on any river section. At least one of these trips must be obtained while operating the vessel or similar vessel, on the respective river section on which the operator will be carrying passengers for hire.

(4) A Utah Captain's/Guide's License is valid for a term of five years. The license will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Captain's/Guide's License may be renewed within the six months prior to its expiration.

(b) To renew a Utah Captain's/Guide's License, the applicant must complete the prescribed application form along with adhering to the requirements described above. A current license holder may renew his license in a manner accepted by the Division

(c) The renewed license will have the same month and day expiration as the original license.

(d) A Utah Captain's/Guide's License that has expired shall not be renewed and the applicant shall be required to apply for a new license.

(5) Requirements to obtain a Utah Boat Crew Permit.

(a) The applicant shall be at least 18 years of age as of the date the application is received by the Division.

(b) The applicant shall complete the prescribed application form.

(i) Information on the application form must be verified by an agent of the employing/sponsoring outfitting company.

(ii) The completed application form must be signed by the applicant and by an agent of the employing/sponsoring outfitting company.

(iii) For persons who are applying for their first permit, the application and issuance of the permit shall be done in a manner accepted by the Division.

(c) The applicant shall pay a \$50 application fee for the original permit and first endorsement. A \$10 fee shall be charged for each additional crew permit endorsement.

(d) The applicant shall choose from the four types of permit endorsements:

- (i) Lake and Reservoir Crew (LRC)
- (ii) Tow Vessel Crew (TVC)
- (iii) Whitewater River Crew (WRC)
- (iv) Other River Crew (ORC)

(e) The applicant shall provide original proof of current and valid first aid and CPR certifications:

(i) The first aid certificate must be issued for an American Red Cross "Standard" or "Basic" first aid course, or an equivalent course from a reputable provider.

(ii) The CPR certificate must be issued for an American Red Cross, American Heart Association, American Safety and Health Institute, National Safety Council CPR or BLS course, or an equivalent course from a reputable provider whose curriculum is in accordance with the 2005 Consensus on Science for Cardiopulmonary Resuscitation (CPR) and Emergency Cardiovascular Care (ECC).

(iii) First aid and CPR certificates must include the following information: name, or title of the course; course provider; length of certification; name of the person certified and legible name of the course instructor.

(f) The applicant shall provide documentation of vessel operation experience that has been obtained within the 10 years previous to the date of application.

(i) Lake and Reservoir Crew (LRC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, on which the operator will be carrying passengers for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(ii) Tow Vessel Crew (TVC) - A minimum of at least 20 hours of actual vessel operation experience. At least 10 of these hours must be obtained while operating the vessel, or a similar vessel, that will be towing for hire on the specific lake or reservoir on which the operator will be towing vessels for hire. The applicant shall provide proof of successful completion of a NASBLA approved boating safety course.

(iii) Whitewater River Crew (WRC) - A minimum of three river trips on "whitewater" rivers or river sections. At least one of these trips must be obtained while operating the vessel, or similar vessel, on the respective river or river section on which the operator will be carrying passengers for hire. A Whitewater River Crew endorsement meets the requirements for an Other River Crew endorsement.

(iv) Other River Crew (ORC) - A minimum of three river trips on any river or river section. At least one of these trips must be obtained while operating the vessel on a respective river or river section on which the operator will be carrying passengers for hire.

(6) A Utah Boat Crew Permit is valid for a term of five years. The permit will expire five years from the date of issue, unless suspended or revoked.

(a) A Utah Boat Crew Permit may be renewed within the six months prior to its expiration.

(b) To renew a Utah Boat Crew Permit, the applicant must complete the prescribed application form along with the requirements described above. A current permit holder may renew his license in a manner accepted by the Division.

(c) The renewed permit will have the same month and day expiration as the original permit.

(d) A Utah Boat Crew Permit that has expired shall not be renewed and the applicant shall be required to apply for a new permit.

(e) A Utah Boat Crew Permit holder who upgrades to a Utah Captain's/Guide's License, within one year of when the

permit was issued, shall receive a \$25 discount on the fee for the Utah Captain's/Guide's License.

(7) In the event a Utah Captain's/Guide's License or a Utah Boat Crew permit is lost or stolen, a duplicate license or permit may be issued with the same expiration date as the original license or permit.

(a) The applicant must complete the prescribed application form.

(b) The fee for a duplicate license or permit is \$15.

(8) Current Utah Captain's/Guide's License and Utah Boat Crew Permit holders shall notify the Division within 30 days of any change of address.

(9) A Utah Captain's/Guide's License or Utah Boat Crew Permit may be suspended, revoked, or denied for a length of time determined by the Division director, or individual designated by the Division director, if one of the following occurs:

(a) The license or permit holder is convicted of three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder during a three-year period.

(b) The license or permit holder is convicted of driving under the influence of alcohol or any drug while carrying passengers for hire, or refuses to submit to any chemical test that determines blood or breath alcohol content resulting from an incident while carrying passengers for hire;

(c) The license or permit holder's negligence or recklessness causes personal injury or death as determined by due process of the law;

(d) The license or permit holder is convicted of utilizing a private trip permit to carry passengers for hire;

(e) The license or permit holder is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(f) The Division determines that the license or permit holder intentionally provided false or fictitious statements or qualifications to obtain the license or permit.

(10) A Utah Captain's/Guide's License or Utah Boat Crew Permit holder shall not carry passengers for hire while operating an unfamiliar vessel or operating on an unfamiliar lake, reservoir, or river section, unless there is a license holder aboard who is familiar with the vessel and the lake, reservoir, or river section. An exception to this rule allows a license or permit holder to lead passengers for hire on a lake, reservoir, or designated flatwater river section, as long as there is a license holder who is familiar with the vessel and the lake, reservoir, or river section and remains within sight of the rest of the group.

(11) Number of passengers carried for each license or permit holder.

(a) On a vessel that is carrying more than 49 passengers for hire, there shall be at least one license holder and one permit holder or two license holders on board.

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore, there shall be an additional license or permit holder on board.

(c) On a vessel carrying passengers for hire, there shall be a minimum of one license or permit holder on board for each passenger deck on the vessel.

(12) Low capacity vessels being led requirements.

(a) On all river sections, except as noted in Subsection (b) below, there shall be at least one qualified license or permit holder for every four low capacity vessels being led in a group.

(b) On lakes, reservoirs, and designated flatwater river sections, there shall be at least one qualified license or permit holder for every six low capacity vessels being led in a group.

(13) A license or permit holder shall not operate a vessel carrying passengers for hire for more than 12 hours in a 24 hour period.

(14) A license or permit holder shall conduct a safety and

emergency protocols discussion with passengers prior to the vessel getting underway. This discussion shall include the topics of water safety, use and stowage of safety equipment, wearing and usage of life jackets and initiating the rescue of a passenger(s).

(15) Vessel operators who are licensed or permitted to carry passengers for hire in another state, and possess a state-issued vessel captain's license, or similar license or permit accepted and recognized by the Division, where the state has similar vessel operator licensing provisions, shall not be required to obtain and possess a Utah Captain's/Guide's License or Utah Boat Crew Permit as required by this section.

**R651-206-4. Additional PFD Requirements for Vessels Carrying Passengers for Hire.**

(1) Type I PFDs are required. Each vessel shall have an adequate number of Type I PFDs on board, that meets or exceeds the number of persons on board the vessel. A Type V PFD may be used in lieu of a Type I PFD if the Type V PFD is approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel must be of an appropriate type and size for infants, children and youth passengers.

(3) Type I PFDs or Type V PFDs - used in lieu of the Type I PFD, must be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs are being stowed on the vessel, the PFDs shall be stowed in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD must be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) The Type IV PFD shall be a ring life buoy on vessels 26 feet or more in length.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two Type IV PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) If U.S. Coast Guard approved Type I PFDs are not available for infants under the weight of 30 pounds, Type II PFDs may be used, provided they are the correct size for the intended wearer.

(8) On rivers, hard-hulled kayak or white water canoe operators or a working employee of the outfitting company, may wear a Type III PFD in lieu of the Type I PFD.

(9) On lakes and reservoirs, for hard-hulled kayak or sea-kayak operators, a Type III PFD may be carried or worn in lieu of the required Type I PFD.

(10) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(11) The license or permit holder is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

**R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.**

(1) Each motorboat that carries passengers for hire, must carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers for hire and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, and carrying passengers for hire, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a

readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

**R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.**

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors.

Each vessel carrying passengers for hire shall be equipped with carbon monoxide detectors in each enclosed passenger area.

(3) Survival Craft.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry an appropriate number of life rafts or other life-saving apparatus respective to the number of passengers carried on board.

(4) Visual distress signals.

Each vessel carrying more than six passengers for hire, and operating at a distance greater than one mile from shore, shall carry a minimum of three visual distress signal flares that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel must carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) Float trip vessels are only required to carry a map of the water body.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) Portable lighting.

Each vessel carrying passengers for hire shall carry on board, at least one portable, battery-operated light per operator or crew member. That portable battery-operated light shall be in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

#### **R651-206-7. Towing Vessels for Hire Requirements.**

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall register with the Division as an outfitting company and pay the appropriate fee. The registration of a person or entity towing for hire will be required beginning January 1, 2008.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A person or entity towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident.

(6) A person or entity towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue

personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged towing vessels for hire shall carry general liability insurance. The insurance coverage shall be a minimum of \$1,000,000 per incident.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large or larger than the average vessel it will be towing.

(9) A vessel engaged in towing vessels for hire, must have at least one license holder on board.

(10) A person or entity towing vessels for hire shall provide appropriate types of training for each of its license and permit holders. Each vessel operator shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(11) The operator and any crew members on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The operator of a vessel engaged in towing vessels for hire is responsible to have all occupants of a vessel being towed to wear a properly fitted PFD for the duration of the tow.

(12) A person or entity engaged in towing vessels for hire must keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The operator of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(13) Additional Equipment Requirements for Vessels Towing for Hire.

(a) PFDs.

(i) Shall carry a sufficient number of Type I PFDs for persons on board a towed vessel.

(ii) Shall carry a minimum of two Type IV PFDs, one of which must be a ring life buoy.

(b) Vessel shall be equipped with a depth finder.

(c) Tow Line.

(i) Shall have a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;



- (v) A jump starting system;
- (vi) A tool kit and spare items for repairs on assisting vessel; and
- (vii) Damage control items for quick repairs to another vessel.

**R651-206-8. Maintenance and Inspections of Vessels Carrying Passengers for Hire.**

(1) Each outfitting company carrying passengers for hire shall have an ongoing vessel maintenance and inspection program. The vessel maintenance and inspection program shall include the structural integrity, flotation, propulsion of the vessel, and equipment associated with passenger safety.

(2) The annual vessel maintenance and inspection program certification will be required beginning January 1, 2009. The five-year vessel inspections will be required no later than January 1, 2014.

(3) The Division shall prepare and maintain a "Carrying Passengers for Hire Vessel Inspection Manual".

(a) The Division shall establish a committee to oversee, maintain, and recommend any substantive changes in the "Carrying Passengers for Hire Vessel Inspection Manual".

(i) The members of this committee shall be selected by the Boating Advisory Council and shall report directly to the Boating Advisory Council.

(ii) This committee shall consist of five members: two members who will represent the non-float trip vessel carrying passengers for hire industry in Utah; two members who will represent the float trip vessel carrying passengers for hire industry in Utah; and one member who will represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when information regarding substantive changes to the "Carrying Passengers for Hire Vessel Inspection Manual" has been presented to the Boating Advisory Council.

(b) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers for Hire Vessel Inspection Manual" that do not pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

(c) The Division shall establish a committee to prepare and develop the portions of the "Carrying Passengers For Hire Vessel Inspection Manual" that pertain to Float Trip Vessels.

(i) This committee shall consist of five members: three members who represent the Float Trip Vessel carrying passengers for hire industry in Utah; and two members who represent a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(ii) This committee will disband after the original "Carrying Passengers for Hire Vessel Inspection Manual" is approved and accepted by the Boating Advisory Council.

**KEY: boating, parks**

**July 27, 2011**

**Notice of Continuation January 11, 2011**

**73-18-4(4)**

**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 engaged in a towed watersport shall be responsible for a flag to be displayed by the observer in a visible manner to other boaters in the area only when a 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**

**July 27, 2011**

**Notice of Continuation January 11, 2011**

**73-18-15**

**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 79-4-203 unless

(a) the person is occupying a designated long-term campsite, and

(b) a long-term camping agreement has been signed by the occupant and the park manager.

**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****July 27, 2011****Notice of Continuation July 7, 2008****79-4-501**

**R651. Natural Resources, Parks and Recreation.**

**R651-611. Fee Schedule.**

**R651-611-1. Use Fees.**

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director and/or designees(s) have the prerogative to waive or reduce fees.

D. A competitive bid process may be used for establishing fees for recreation facilities as determined by the Division Director.

E. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

F. No charge for persons five years old and younger.

G. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

H. The contract operator, with the approval of the Division Director, will set fees for This Is The Place Monument.

I. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

J. Charges for services unique to a park may be established by the park manager with approval from the region manager. All approved charges must be submitted to the Division director or designee.

**R651-611-2. Day Use Entrance Fees.**

Permits the use of all day activity areas in a state park (except This Is The Place Monument). These fees do not include overnight camping facilities or special use fees.

**A. Annual Permits**

1. \$75.00 Multiple Park Permit (good for all parks except at This Is The Place Monument)

2. \$35.00 Senior Multiple Park Permit (good for all parks except at This Is The Place Monument)

3. \$200.00 Commercial Dealer Demonstration Pass

4. \$25 Pedestrian/Cyclist Permit (good at all parks except at This Is The Place Monument)

5. Utah veterans with a 50% or greater service-connected disability may purchase the Utah State Parks annual pass at the same rate as the Senior Adventure Pass. Veterans must complete the Veterans Discount affidavit and provide qualifying information from the Veterans Administration.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$2.00 per person, (\$1.00 for seniors) for pedestrians or bicycles at the following park:

TABLE 1

Dead Horse Point

2. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$5.00 per person, (\$3.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Deer Creek Jordanelle - Hailstone  
Willard Bay

3. \$10.00 (\$5.00 for seniors) per private motor vehicle, or \$4.00 per person, (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 3

Sand Hollow

4. \$9.00 (\$5.00 for seniors) per private motor vehicle or \$5.00 per person (\$3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 4

Utah Lake

5. \$9.00 (\$5.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 5

East Canyon Rockport

6. \$8.00 (\$4.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 6

Bear Lake Marina Bear Lake - Rendevous  
Quail Creek

7. \$7.00 (\$4.00 for seniors) per private motor vehicle or \$4.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 7

Jordanelle - Rockcliff Yuba

8. \$7.00 (\$4.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 8

Goblin Valley Red Fleet  
Scofield Starvation  
Steinaker

9. \$6.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 9

Coral Pink Hyrum  
Kodachrome Palisade

10. \$6.00 (\$3.00 for seniors) per private motor vehicle or \$2.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the following park:

TABLE 10

Antelope Island

11. \$2.00 (\$1.00 for seniors) per private vehicle at the following park:

TABLE 11

Great Salt Lake

12. \$6.00 per adult, \$3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and \$3.00 for seniors at Utah Field House State Park.

13. \$5.00 per adult, \$3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively).

TABLE 12

Edge of the Cedars

14. \$2.00 per person (\$1.00 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 13

Camp Floyd Territorial

15. \$4.00 per person (\$2.00 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 14

Anasazi

16. \$3.00 per person (\$1.50 for seniors), or \$6.00 per family (up to eight (8) individuals (\$3.00 for seniors), at the following parks:

TABLE 15

Fremont Iron Mission

17. \$5.00 (\$3.00 for seniors) per private motor vehicle or \$3.00 per person (\$2.00 for seniors), for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

18. \$15.00 per OHV rider at the Jordan River OHV Center.

19. \$2.00 per person for commercial groups or vehicles with nine (9) or more occupants (\$15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. \$2.00 per person, age six (6) and over, for sites with basic facilities. Minimum cost for Group Day Use for the following parks:

TABLE 16

1. Fixed (flat) rate:	
Bear Lake - East Side	\$ 75.00
Bear Lake - Big Creek	\$ 75.00
Bear Lake - Willow	\$ 75.00
Bear Lake Marina	\$ 75.00
Camp Floyd Day Use Pavilion	\$ 30.00
Deer Creek Island	\$100.00
Deer Creek - Sailboat	\$100.00
Deer Creek - Peterson	\$100.00
Deer Creek - Rainbow	\$200.00
Deer Creek - Wallsburg	\$300.00
East Canyon - Small	\$100.00
East Canyon - Medium	\$175.00
Fremont	\$ 70.00
Hyrum	\$150.00
Jordanelle - Hailstone Cabanas	\$ 20.00
Jordanelle - Beach	\$175.00
Jordanelle - Cove	\$175.00

Jordanelle - Keatley	\$175.00
Jordanelle - Rock Cliff North	\$175.00
Jordanelle - Rock Cliff South	\$175.00
Jordanelle - Group Day Use Per	
Facility Hailstone Event Center	\$2,500.00
Otter Creek -	\$100.00
Rockport - Crandalls	\$100.00
Rockport - Highland	\$100.00
Rockport - Lariat Loop	\$100.00
Rockport - Old Church	\$250.00
Snow Canyon - Galoot Day Use	\$ 75.00
Starvation - Mountain View	\$150.00
Steinaker -	\$150.00
Wasatch - Cottonwood	\$175.00
Wasatch - Oak Hollow	\$175.00
Wasatch - Soldier Hollow	\$175.00
Willard - Eagle Beach (150 max)	\$200.00
Willard - Pelican Beach (250 max)	\$350.00
Yuba Lake - Group Day Use Area	\$ 75.00

2. \$3.00 per person and \$2.00 per vehicle at Antelope Island State Park.

3. \$2 per person with a minimum fee of \$50 at Huntington, Millsite and Palisade state parks.

E. Antelope Island Wildlife Management Program: A \$1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

**R651-611-3. Camping Fees.**

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Except as provided in R651-606-5, camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. \$10.00 with pit or vault toilets; \$13.00 with flush toilets; \$16.00 with flush toilets and showers or electrical hookups; \$20.00 with flush toilets, showers and electrical hookups; \$25.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a \$2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. The following fees will apply to Overnight Group Camping:

TABLE 17

1. Reservation Fee: \$10.65 at the following parks:

Bear Lake - Eastside -	\$ 75.00
Bear Lake - Big Creek -	\$ 75.00
Bear Lake - Willow -	\$ 75.00
Bear Lake Marina -	\$ 75.00
Deer Creek - Wallsburg -	\$400.00
East Canyon - Large Springs -	\$ 50.00

East Canyon - Mormon Flats -	\$ 75.00
East Canyon - New -	\$200.00
Escalante Group Area -	\$ 50.00
Fremont - Group Area -	\$ 70.00
Hyrum -	\$150.00
Jordanelle - Beach	\$250.00
Jordanelle - Cover	\$250.00
Jordanelle - Keatley	\$250.00
Jordanelle - Rock Cliff North	\$250.00
Jordanelle - Rock Cliff South	\$250.00
Kodachrome - Arches -	\$ 65.00
Kodachrome - Oasis -	\$ 65.00
Otter Creek -	\$100.00
Rockport - Hawthorne	\$150.00
Rockport - Riverside	\$150.00
Rockport - Old Church	\$150.00
Snow Canyon - Quail Group Area	\$ 65.00
Steinaker -	\$200.00
Wasatch - Soldier Hollow Chalet	\$250.00
Willard - Pelican Beach (250 max)	\$350.00
Yuba - Painted Rocks	\$100.00
Yuba - Oasis	\$100.00

- 2. \$3.00 per person at Dead Horse (minimum - \$45.00)
- 3. \$3.00 per person at Goblin Valley, Green River No.1 and No. 2, Starvation, Palisade and Scofield (minimum) - \$75.00
- 4. \$3.00 per person and \$2 per vehicle. Antelope Island (minimum) \$60.00

**R651-611-4. Special Fees.**

- A. Golf Course Fees
  - 1. Palisade rental and green fees.
    - a. Nine holes general public - weekends and holidays - \$13.00
    - b. Nine holes weekdays (except holidays) - \$11.00
    - c. Nine holes Jr/Sr weekdays (except holidays) - \$8.00
    - d. 20 round card pass - \$180.00
    - e. 20 round card pass (Jr only) - \$125.00
    - f. Promotional pass - single person (any day) - \$500.00
    - g. Promotional pass - single person (weekdays only) - \$350.00
    - h. Promotional pass - couples (any day) - \$700.00
    - i. Promotional pass - family (any day) - \$900.00
    - j. Promotional pass - annual youth pass - \$150.00
    - k. Companion fee - walking, non -player - \$4.00
    - l. Motorized cart (18 holes) - \$10.00
    - m. Motorized cart (9 holes) - \$5.00
    - n. Pull carts (9 holes) - \$2.00
    - o. Club rental (9 holes) - \$5.00
    - p. School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.
    - q. Driving range - small bucket - \$2.50
    - r. Driving range - large bucket - \$3.50
  - 2. Wasatch Mountain and Soldier Hollow rental and green fees.
    - a. Nine holes general public - \$14.50
    - b. Nine holes general public (weekends and holidays) - \$14.50
    - c. Nine holes Jr weekdays (except holidays) - \$11.00
    - d. Nine holes Sr weekdays (except holidays) - \$12.00
    - e. 20 round card pass - \$240.00 - no holidays or weekends
    - f. Annual Promotional Pass (except holidays) - \$1,000.00
    - g. Business Class Membership Pass - \$1,000.00
    - h. Companion fee - walking, non-player - \$4.00
    - i. Motorized cart (9 holes - mandatory on Mt. course) - \$13.00
    - j. Motorized cart (9 holes single rider) - \$6.50
    - k. Pull carts (9 holes) - \$2.25
    - l. Club rental (9 holes) - \$6.00
    - m. School teams - No fee for practice rounds with coach and team roster (Wasatch County only). Tournaments are \$3.00 per player.
    - n. Tournament fee (per player) - \$5.00

- o. Driving range - small bucket - \$2.50
- p. Driving range - large bucket - \$5.00
- q. Advance tee time booking surcharge - \$15.00
- r. Gift Certificate Fee (Per Player) - \$5.00
- 3. Green River rental and green fees.
  - a. Nine holes general public - \$10.00
  - b. Nine holes Jr/Sr weekdays (except holidays) - \$8.00
  - c. Eighteen holes general public - \$16.00
  - d. 20 round card pass - \$160.00
  - e. Promotional pass - single person (any day)- \$375.00
  - f. Promotional pass - personal golf cart - \$350.00
  - g. Promotional pass - single person (Jr/Sr weekdays)- \$275.00
    - h. Promotional pass - couple (any day) - \$600.00
    - i. Promotional pass - family (any day) - \$750.00
    - j. Promotional pass - annual youth pass - \$150.00
    - k. Companion fee - walking, non-player - \$4.00
    - l. Motorized cart (9 holes) - \$10.00
    - m. Motorized cart (9 holes single rider) - \$5.00
    - n. Pull carts (9 holes) - \$2.25
    - o. Club rental (9 holes) - \$5.00
    - p. School teams - No fee for practice rounds with coach and team roster. Tournaments are \$3.00 per player.
  - 4. Golf course hours are daylight to dark
  - 5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.
  - 6. Jr golfers are 17 years and under. Sr golfers are 62 and older.
    - B. Boat Mooring and Dry Storage
      - 1. Mooring Fees:
        - a. Day Use - \$5.00
        - b. Overnight Boat Parking - \$7.00 (until 8:00 a.m.)
        - c. Overnight Boat Camping - \$15.00 (until 2:00 p.m.)
        - d. Monthly - \$4.00/ft.
        - e. Monthly with Utilities - (Bear Lake and Jordanelle - Hailstone) \$7.00/ft.
        - f. Monthly with Utilities - (Other Parks) \$5.00/ft.
        - g. Monthly Off Season - \$3.00/ft
        - h. Monthly (Off Season with utilities) - \$4.00/ft
      - 2. Dry Storage Fees:
        - a. Overnight (until 2:00 p.m.) - \$5.00
        - b. Monthly During Season - \$75.00
        - c. Monthly Off Season - \$50.00
        - d. Monthly (unsecured) - \$25.00
- C. Application Fees - Non - refundable PLUS Negotiated Costs.
  - 1. Grazing Permit - \$20.00
  - 2. Easement - \$250.00
  - 3. Construction/Maintenance - \$50.00
  - 4. Special Use Permit - \$50.00
  - 5. Waiting List - \$10.00
  - D. Assessment and Assignment Fees.
    - 1. Duplicate Document - \$10.00
    - 2. Contract Assignment - \$20.00
    - 3. Returned checks - \$30.00
    - 4. Staff time - \$50.00/hour
    - 5. Equipment Maintenance and Repair:
      - Snow Cat - \$100.00/hour
      - Boat - \$50.00/per hour
      - ATV/Snowmobile - \$50.00/hour
      - Other Heavy Equipment - \$100.00/hour
      - Vehicle - \$50.00/hour
    - 6. Researcher - \$5.00/hour
    - 7. Photo copy - \$ .30/each - Black and White - \$1.00/each - Color
    - 8. Fee collection - \$10.00
  - E. Lodging Fees.
    - 1. Cabins:
      - (a) Basic: No indoor plumbing or kitchenette

\$60 per night - weekend  
\$40 per night - Sunday through Thursday  
(b) Deluxe: Indoor plumbing and kitchenette  
\$80 per night - weekend  
\$60 per night - Sunday through Thursday  
2. Yurt - (circular, domed portable tent)  
\$60 per night  
F. Facility Rental Fees.  
Jordanelle Visitor Center - Up to \$2,500 per day.

**R651-611-5. Reservations.**

- A. Camping Reservation Fees.
1. Individual Campsite \$8.50
  2. Group site or building rental \$10.65
  3. Fees identified in No. 1 and No. 2 above are to be charged for both initial reservations and for changes to existing reservations.
- B. All park facilities will be allocated on a first-come, first-serve basis.
- C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: [www.stateparks.utah.gov](http://www.stateparks.utah.gov).
- D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.
- E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.
- F. The park manager for any group reservation or special use permit may require a cleanup deposit.
- G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.
- H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

**KEY: parks, fees****July 27, 2011****79-4-203(8)****Notice of Continuation January 24, 2011**

**R657. Natural Resources, Wildlife Resources.****R657-5. Taking Big Game.****R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

**R657-5-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(t)(i) "Valid application" means:

(A) it is for a species that the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (a) may still be considered valid if the application is timely corrected through the application correction process.

**R657-5-3. License, Permit, and Tag Requirements.**

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or guidebooks of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

**R657-5-4. Age Requirements and Restrictions.**

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(c) A person who is younger than 14 years of age may not apply for or obtain the following types of big game permits issued by the division through a public drawing:

(i) premium limited entry;

(ii) limited entry;

(iii) once-in-a-lifetime; and

(iv) cooperative wildlife management unit.

(d) A person who is 13 years of age may apply for or obtain a type of permit listed in Subsection(1)(c) if that person's 14th birthday falls within the calendar year for which the permit is issued.

(e) antlerless deer, antlerless elk, and doe pronghorn



permits are not limited entry, premium limited entry or cooperative wildlife management unit permits for purposes of determining a 12 or 13 year olds eligibility to apply for or obtain through a public drawing administered by the division.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

#### **R657-5-5. Duplicate License and Permit.**

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

#### **R657-5-6. Hunting Hours.**

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

#### **R657-5-7. Prohibited Weapons.**

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) 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 visible beam of light. Laser range finding devices are exempt from this restriction.

#### **R657-5-8. Rifles and Shotguns.**

(1) The following rifles and shotguns may be used to take big game:

- (a) any rifle firing centerfire cartridges and expanding bullets; and
- (b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

#### **R657-5-9. Handguns.**

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

#### **R657-5-10. Muzzleloaders.**

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

- (a) can be loaded only from the muzzle;
- (b) has open sights, peep sights, or a fixed non-magnifying 1x scope;
- (c) has a single barrel;
- (d) has a minimum barrel length of 18 inches;
- (e) is capable of being fired only once without reloading;
- (f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;
- (g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based

smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may:

(i) use only muzzleloader equipment authorized in this Section to take the species authorized in the permit; and

(ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) 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 protected wildlife.

#### **R657-5-11. Archery Equipment.**

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw, except as provided in Rule R657-12;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may:

(i) use only archery equipment authorized in this section to take the species authorized in the permit; and

(ii) not possess or be in control of a rifle, shotgun or muzzleloader while in the field during an archery hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl

provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt;

(iii) livestock owners protecting their livestock; or

(iv) 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 protected wildlife.

#### **R657-5-12. Areas With Special Restrictions.**

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-614-4.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

#### **R657-5-13. 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:

(i) take protected wildlife; or

(ii) located protected wildlife while having in possession a rifle, shotgun, archery equipment or muzzleloader.

(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 headlights 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.

#### **R657-5-14. Use of Vehicle or Aircraft.**

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

#### **R657-5-15. Party Hunting and Use of Dogs.**

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

#### **R657-5-16. Big Game Contests.**

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than \$500.

#### **R657-5-17. Tagging.**

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

#### **R657-5-18. Transporting Big Game Within Utah.**

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal

receipt from the division or a donation slip as provided in Section 23-20-9.

**R657-5-19. Exporting Big Game From Utah.**

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

**R657-5-20. Purchasing or Selling Big Game or Their Parts.**

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

**R657-5-21. Possession of Antlers and Horns.**

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-20; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle

process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

**R657-5-22. Poaching-Reported Reward Permits.**

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must possess or obtain a Utah hunting or combination license and otherwise be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

**R657-5-23. General Archery Buck Deer Hunt.**

(1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer within the general hunt area specified on the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the

guidebook of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt by region the general archery, the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the guidebook of the Wildlife Board for taking big game.

#### **R657-5-24. General Any Weapon Buck Deer Hunt.**

(1) The dates for the general any weapon buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) (a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively, for each

respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

#### **R657-5-25. General Muzzleloader Buck Deer Hunt.**

(1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the guidebooks of the Wildlife Board for taking big game.

#### **R657-5-26. Limited Entry Buck Deer Hunts.**

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck hunting, except as specified in the guidebook of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management buck deer, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule

R657-42-9(3).

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

**R657-5-27. Antlerless Deer Hunts.**

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

- (i) the permits are both valid for the same area;
  - (ii) the appropriate archery equipment is used if hunting with an archery permit;
  - (iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.
- (b)(i) General archery deer;
- (ii) general muzzleloader deer;
- (iii) limited entry archery deer; or
- (iv) limited entry muzzleloader deer.

**R657-5-28. General Archery Elk Hunt.**

(1) The dates of the general archery elk hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

- (i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;
- (ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units;
- (iii) one elk, any bull or antlerless on the Wasatch Front or Uintah Basin extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the guidebook of the Wildlife Board for taking big game.

**R657-5-29. General Season Bull Elk Hunt.**

(1) The dates for the general season bull elk hunt are provided in the guidebook of the Wildlife Board for taking big

game within general season elk units, except in the following areas:

- (a) Salt Lake County south of I-80 and east of I-15; and
  - (b) elk cooperative wildlife management units.
- (2)(a) A person may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

**R657-5-30. General Muzzleloader Elk Hunt.**

(1) The dates of the general muzzleloader elk hunt are provided in the guidebook of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

- (a) Salt Lake County south of I-80 and east of I-15; and
- (b) elk cooperative wildlife management units.

(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

**R657-5-31. Youth General Any Bull Elk Hunt.**

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the guidebook of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

**R657-5-32. Premium Limited Entry and Limited Entry Bull Elk Hunts.**

(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain the respective premium limited entry or limited entry elk permit.

(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all limited entry bull elk seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.

(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-33(3).

**R657-5-33. Antlerless Elk Hunts.**

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

- (i) the permits are both valid for the same area;
- (ii) the appropriate archery equipment is used if hunting with an archery permit;
- (iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General buck deer for archery, muzzleloader or any legal weapon;

(ii) general bull elk for archery, muzzleloader or any legal weapon;

(iii) limited entry buck deer for archery, muzzleloader or any legal weapon; or

(iv) limited entry bull elk for archery, muzzleloader or any legal weapon.

**R657-5-34. Buck Pronghorn Hunts.**

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt when only archery equipment may be used and on buck pronghorn cooperative wildlife management unit located within a limited entry unit.

**R657-5-35. Doe Pronghorn Hunts.**

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless pronghorn permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

**R657-5-36. Antlerless Moose Hunts.**

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

**R657-5-37. Bull Moose Hunts.**

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

#### **R657-5-38. Bison Hunts.**

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

#### **R657-5-39. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.**

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain bighorn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person

using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

#### **R657-5-40. Rocky Mountain Goat Hunts.**

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in

Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

#### **R657-5-41. Depredation Hunter Pool Permits.**

(1) When big game are causing damage, or are considered a nuisance control hunts not listed in the guidebook of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) For the purpose of this section nuisance is defined as a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

#### **R657-5-42. Carcass Importation.**

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

- (a) meat that is cut and wrapped either commercially or privately;
- (b) quarters or other portion of meat with no part of the spinal column or head attached;
- (c) meat that is boned out;
- (d) hides with no heads attached;
- (e) skull plates with antlers attached that have been cleaned of all meat and tissue;
- (f) antlers with no meat or tissue attached;
- (g) upper canine teeth, also known as buglers, whistlers, or ivories; or
- (h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

- (a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;
- (b) do not have their deer or elk processed in Utah; or
- (c) do not leave any parts of the carcass in Utah.

#### **R657-5-43. Chronic Wasting Disease - Infected Animals.**

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

- (a) retain the entire carcass of the animal;
- (b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or
- (c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private

landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

#### **R657-5-44. Management Bull Elk Hunt.**

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed pursuant to R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

#### **R657-5-45. General Any Weapon Buck Deer and Bull Elk Combination Hunt.**

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the guidebook of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-27, and

(b) antlerless elk, as provided in Subsection R657-5-33.

(4)(a) Lifetime license holders may obtain a general any



weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

**R657-5-46. Management Buck Deer Hunt.**

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(2) Management buck deer permits shall be distributed pursuant to rule R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management buck deer permit holders may take one management buck deer during the season, on the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-28(4).

**KEY: wildlife, game laws, big game seasons**

**July 11, 2011**

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**23-14-18**

**23-14-19**

**23-16-5**

**23-16-6**

**R671. Pardons (Board of), Administration.****R671-102. Americans with Disabilities Act Complaint Procedures.****R671-102-1. Authority and Purpose.**

(1) This rule is made under authority of Utah Code Ann. Subsection 63G-3-201(3). The Board of Pardons and Parole (Board) adopts, defines, and publishes within this rule the grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Board because of a disability.

**R671-102-2. Definitions.**

(1) "ADA Coordinator" means the Board's Administrative Coordinator, assigned by the Board's Chairperson to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may also be a representative of the Department of Human Resource Management assigned to the Board.

(2) "Board" means the Board of Pardons and Parole created by Utah Const. Art. 7, Section 12(1), and Utah Code Ann. Section 77-27-2(1).

(3) "Chairperson" as provided in Utah Code Ann. Subsection 77-27-4(1), means the Board's Chairperson.

(4) "Designee" means an individual appointed by the Board's Chairperson, or the Board's Vice-Chairperson, to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the Board; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Board. A "qualified individual" is also one who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(8) "Vice-Chairperson," as provided in Utah Code Ann. Subsection 77-27-4(2), means the Board's Vice-Chairperson.

**R671-102-3. Filing of Complaints.**

(1) Any qualified individual may file a complaint alleging non-compliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the Board's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case

qualified individuals shall file their complaints with the Board's designee.

(3) Qualified individuals shall file their complaints within 90 days after the date of the alleged non-compliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Board's Chairperson has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged non-compliance.

(4) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(6) If the complaint is not in writing, the ADA Coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By filing a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review of all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code Ann. Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 2112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

**R671-102-4. Investigation of Complaints.**

(1) The ADA Coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsections R671-102-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA Coordinator or designee may seek assistance from the Attorney General's staff, and the Board's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA Coordinator or designee may also consult with the Vice-Chairperson in making a recommendation.

(3) The ADA Coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

**R671-102-5. Recommendation and Decision.**

(1) Within 15 working days after receiving the complaint, the ADA Coordinator or designee shall recommend to the Board's Vice-Chairperson what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA Coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing or in another accessible

format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The Board's Vice-Chairperson may confer with the ADA Coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The Board's Vice-Chairperson shall render a decision within 15 working days after the Board's Vice-Chairperson's receipt of the recommendation from the ADA Coordinator or designee. The Board's Vice-Chairperson shall take all reasonable steps to implement the decision. The Board's Vice-Chairperson's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

#### **R671-102-6. Appeals.**

(1) The complainant may appeal the Board's Vice-Chairperson's decision to the Board's Chairperson within ten working days after the complainant's receipt of the Vice Chairperson's decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The Board's Chairperson may name a designee to assist on the appeal. The ADA coordinator or his designee may not also be the Board's Chairperson's designee for the appeal.

(4) In the appeal, the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The Board's Chairperson or his designee shall review the ADA Coordinator's or his designee's recommendation, the Board's Vice-Chairperson's decision, and the points raised on appeal prior to reaching a decision. The Board's Chairperson may direct additional investigation as necessary. The Board's Chairperson shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The Board's Chairperson shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the Board's Chairperson is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

#### **R671-102-7. Record Classification.**

(1) Records created in administering this rule are classified as "protected" under Utah Code Ann. Subsections 63G-2-305(9), (22), (24), and (25).

(2) After issuing a decision under Section R671-102-5, or a final decision upon appeal under Section R671-102-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Utah Code Ann. Subsection 63G-2-302(1)(b), or "controlled" under Utah Code Ann. Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the Board's Vice-Chairperson or the Board's Chairperson shall be classified as "public," and all other records, except controlled records under Subsection R671-

102-7(2), classified as "private."

#### **R671-102-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Utah Code Ann. Section 34A-5-107 and Utah Code Ann. Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

#### **KEY: disabilities**

**July 26, 2011**

**Notice of Continuation July 25, 2007**

**67-19-32**

**63G-2**

**R708. Public Safety, Driver License.****R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.****R708-41-1. Authority.**

This rule is authorized by Section 53-3-104.

**R708-41-2. Purpose.**

The purpose of this rule is to define acceptable documentation for a Utah license certificate or Utah Identification card and to establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3.

**R708-41-3. Definitions.**

(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number as a result of the applicant's legal/lawful presence status, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545

which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE) which may provide evidence of both legal/lawful presence; or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English or a foreign passport including a certified translation if the passport is not in English:

(i) Church records;

(ii) Court records;

(iii) Driver License;

(iv) Employee ID;

(v) Insurance ID card;

(vi) Matricular Consular Card (issued in Utah);

(vii) Mexican Voter Registration card;

(viii) School records;

(ix) Utah DPC;

(x) Other evidence considered acceptable by the division director or designee.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

(a) ITIN card issued by the Internal Revenue Service (IRS); or

(b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:

(i) United States citizen;

(ii) National of the United States of America; or

(iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) Pending or approved application for asylum in the United States;

(iii) Admission into the United States as a refugee;

(iv) Pending or approved application for temporary

protected status in the United States;

(v) Approved deferred action status;

(vi) Pending application for adjustment of status to legal permanent resident or conditional resident; or

(vii) Conditional permanent resident alien.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

(A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;

(B) Pending or approved application for asylum in the United States;

(C) Admission into the United States as a refugee;

(D) Pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status;

(F) Pending application for adjustment of status to legal permanent resident or conditional resident; or

(G) Conditional permanent resident alien.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and may be verified through the Social Security On-Line Verification system (SSOLV) during every application process and includes:

(a) Social Security card issued by the U.S. government that has been signed or,

(b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:

(i) W-2 form;

(ii) SSA-1099 form;

(iii) Non SSA-1099 form;

(iv) Pay stub showing the applicant's name and SSN; or

(v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number as a result of their legal/lawful presence status.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9) and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

(a) Bank statement (dated within 60 days);

(b) Court documents;

(c) Current mortgage or rental contract;

(d) Major credit card bill (dated within 60 days);

(e) Property tax notice (statement or receipt dated within one year);

(f) School transcript (dated within 90 days);

(g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;

(h) Valid Utah vehicle registration or title;

(i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

(18) "Veteran indicator" means the word VETERAN will be added to specific driver license certificates and identification certificates during the application process at the applicant's request and upon the applicant providing proof of an honorable discharge from the United States military in the form of a DD214 or other documents, if approved by the division director or designee.

**R708-41-4. Obtaining a Utah Learner Permit, Provisional License Certificate, Regular License Certificate, Limited-Term License Certificate, Driving Privilege Card, CDL Certificate, Limited-Term CDL Certificate, Identification Card, or Limited-Term Identification Card.**

(1) An individual who is applying for a Learner Permit must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a) and one identity document as outlined in definition (6)(a); or

(b) One legal/lawful presence document as outlined in definition (9)(b) and one identity document as outlined in definition (6)(b); or

(c) Two identity documents as outlined in definition (6)(c) for undocumented immigrants; and

(d) Evidence of their SSN as outlined in definition (11), or evidence of their ineligibility to obtain a SSN as outlined in definition (12), or evidence of their ITIN as outlined in definition (7); and

(e) Evidence of their current Utah residence address as outlined in definition (17).

(2) An individual who is applying for a provisional license certificate, regular license certificate, CDL certificate, or identification card must provide the following documents, except that an applicant for an identification card does not need to comply with (2)(e):

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(f) CDL applicants must provide a current DOT Medical card.

(3) An individual who is applying for a renewal of a regular license certificate, provisional license certificate, or CDL certificate card must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17).

(4) An individual who is applying for a duplicate of a regular license certificate, a provisional license certificate, or CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) One identity document as outlined in definition (6)(a), unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as

outlined in definition (17).

(5) An individual who is applying for a limited-term license certificate, limited-term provisional certificate, limited CDL certificate, or limited-term identification card must provide the following documents, except that an applicant applying for a limited-term identification card does not need to comply with (5)(e):

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12), except that applicants for an original limited-term CDL must provide their Social Security card; and

(d) Evidence of their current Utah residence address as outlined in definition (17); and

(e) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(6) An individual who is applying for a renewal of a limited-term license certificate, a limited-term provisional license certificate, or limited-term CDL certificate must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(7) An individual who is applying for a duplicate of a limited-term license certificate, a limited-term provisional license certificate or a limited-term CDL certificate, must provide the following documents:

(a) One legal/lawful presence document as outlined in definition (9)(b); and

(b) One identity document as outlined in definition (6)(b) unless previously recorded by the division during an application process on or after January 1, 2010; and

(c) Evidence of their SSN as outlined in definition (11), unless previously recorded by the division during an application process on or after January 1, 2010, or evidence of ineligibility to obtain a SSN as outlined in definition (12); and

(d) Evidence of their current Utah residence address as outlined in definition (17);

(8) An individual who is applying for a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17); and

(d) Evidence of completion of a course in driver training approved by the commissioner, or evidence that the individual was issued a driving privilege in another state or country.

(9) An individual who is applying for a renewal of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c)

for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

(10) An individual who is applying for a duplicate of a Driving Privilege card must provide the following documents:

(a) Two identity documents as outlined in definition (6)(c) for undocumented immigrants unless previously recorded by the division during an application process on or after January 1, 2010; and

(b) Evidence of a SSN as outlined in definition (11); or evidence of an ITIN as outlined in definition (7); and

(c) Evidence of their current Utah residence address as outlined in definition (17).

**R708-41-5. Exceptions.**

This rule does not apply when issuing driver license certificates or identification cards in support of Federal, State, or local criminal justice agencies or other programs that require special licensing or identification or safeguard the persons or in support of their official duties.

**R708-41-6. Document Storage.**

All documents provided to the division by an applicant during a license certificate or identification card application process as proof of identity, proof of lawful/legal presence, proof of SSN, or ineligibility to obtain a SSN, ITIN, address verification, or proof of name change will be imaged and stored in a secure database with controlled access. Except that at the applicant's request the information on a U.S. birth certificate may be written on the license or identification card application rather than scanning the document.

**KEY: acceptable documents, identification card, license certificate, limited-term license certificate**

**July 12, 2011**

**53-3-104**

**Notice of Continuation March 25, 2010**

**53-3-205**

**53-3-214**

**53-3-410**

**53-3-804**

**R708. Public Safety, Driver License.****R708-46. Refugee or Approved Asylee Knowledge Test in Applicant's Native Language.****R708-46-1. Purpose.**

Effective July 1, 2011, the Utah Driver License Division shall allow an applicant for a limited-term driver license to take the knowledge test on the state of Utah traffic laws in the person's native language the first time the person applies for a limited-term license certificate.

**R708-46-2. Authority.**

This rule is authorized by Section 53-3-206.

**R708-45-3. Definitions.**

- (1) "Refugee" means a person who has entered into the United States in refugee status.
- (2) "Approved Asylee" means a person who has an approved application for asylum in the United States or who has a pending application for asylum in the United States.
- (3) "Limited-Term License Certificate" means the evidence of the privilege granted and issued under Chapter 53-3 to drive a motor vehicle to a person whose privilege was obtained providing evidence of lawful presence in the United States with one of the document requirements described in Subsection 53-3-205(8)(a)(ii)(B).

**R708-46-4. Requirements.**

- (1) The first time an applicant with a refugee or approved asylee status applies for a limited-term certificate they shall be given the opportunity to take the knowledge test in their native language.
- (2) The Division of Workforce Services will maintain a list of qualified interpreters on the web.

**R708-46-5. Procedures.**

- (1). The applicant must schedule an appointment for their first test using the on-line scheduler.
- (2). The applicant must arrange for an interpreter approved by the Division of Workforce Services to accompany them for the test.
  - (a)The examiner will print a test from the testing kiosk server.
  - (b) The examiner will observe the interpreter read the test questions and answers to the applicant in their native language.
  - (c) Upon completion of the test, the examiner will:
    - (1) Grade the test
    - (2) Inform the applicant of the test score.
    - (3) Enter the results of the test on the applicant's driver license record.

**KEY: limited-term driver license; knowledge test; refugee; approved asylee**  
**July 12, 2011**

**53-3-206**



**R710. Public Safety, Fire Marshal.****R710-2. Rules Pursuant to the Utah Fireworks Act.****R710-2-1. Adoption.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives indoor or outdoor; and requirements for licensing of importer, wholesaler, display operator, special effects operator, flame effects operator, and flame effect performing artist.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.4 National Fire Protection Association (NFPA), Standard 160, Standard for the Use of Flame Effects Before an Audience, 2011 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-10, et seq.

1.5 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

**R710-2-2. Definitions.**

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "Aerial device" means a cake that is a collection of mine/shell tubes that has a single covered fuse which is used to light several tubes in sequence. A cake may also be defined as an aerial repeater or multi-shot aerial and does not exceed more than 500 grams of pyrotechnic composition.

2.3 "Covered fuse" means a fuse or designed point of ignition that is protected against accidental ignition by contact with a spark, smoldering item or small open flame.

2.4 "Flame Effects" means Flame Effects Operator or Flame Effects Performing Artist.

2.5 "Flame Effects Performing Artist" means a fire spinner, fire dancer or fire performer who is paid to perform professionally in a public location.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "Licensed Operator" means any person who discharges, ignites, supervises, manages, oversees or directs the discharge of display fireworks, special effects fireworks, flame effects or flame effects performing artist.

2.9 "NAFAA" means the North American Fire Arts Association.

2.10 "NFPA" means National Fire Protection Association.

2.11 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.12 "Person" means an individual, company, partnership or corporation.

2.13 "Pre-packaged" means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.14 "Resale" means the act of reselling class B or C explosives to a new party.

2.15 "SFM" means the State Fire Marshal.

2.16 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.17 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.18 "UCA" means Utah Code Annotated.

**R710-2-3. General Requirements.**

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

3.6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

3.12 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units with covered fuses.

**R710-2-4. Indoor Sales.**

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

4.5 Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to

determine the weight of the pyrotechnic composition.

4.6 Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

4.7 Rack storage of Class C common state approved explosives inside of buildings is prohibited.

#### **R710-2-5. Temporary Stands, Trailers and Tents.**

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

#### **R710-2-6. Display, Sale, and Signage of Aerial Devices.**

6.1 In addition to those requirements in R710-2-3, R710-2-4 and R710-2-5, all aerial devices shall be packaged and displayed for sale in a manner that would provide public safety by completing the following:

6.1.1 Aerial devices shall be placed in an area that is physically separated from the public so that the customer cannot handle the aerial devices without the assistance of an employee. There shall be signage placed at the aerial device display directing customers that aerial devices cannot be attained without the assistance of a store employee.

6.1.2 Where aerial devices are sold in permanent structures or other approved locations, the aerial device display shall be placed in a location that gives the customer access to the aerial devices just before the customer checks out and exits the store.

6.1.3 Wherever aerial devices are sold, there shall be

signage with a minimum font of one inch, to warn and inform the customer of the dangers of aerial devices and the signage shall state the following:

6.1.3.1 Aerial fireworks are designed to travel up to 150 feet into the air and then explode.

6.1.3.2 Aerial fireworks shall be placed on a hard level surface outdoors, in a clear and open area prior to ignition.

6.1.3.3 Anyone under the age of 16 shall not handle or operate aerial fireworks.

6.1.3.4 Ignition of aerial fireworks shall be a minimum of 30 feet from any structure or vertical obstruction.

6.1.3.5 Aerial fireworks shall not be ignited within 150 feet of the point of sale.

6.1.3.6 Please read and obey all safe handling instructions before using aerial fireworks."

#### **R710-2-7. Display Operator, Special Effects Operator, Flame Effects Operator, or Flame Effects Performing Artist Licenses.**

7.1 Application for a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 9 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 9 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 The applicant shall indicate on the application which license the applicant wishes to apply for:

7.10.1 Display Operator

7.10.2 Special Effects Operator

7.10.3 Flame Effects Operator

7.10.4 Flame Effects Performing Artist

7.11 Every person who wishes to secure a display licensed operator, special effects licensed operator, or flame effects licensed operator original license shall demonstrate proof of competence by:

7.11.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.11.2 The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination.

7.11.3 Submit written verification with the application of having completed a display operators safety class, a special effects operators safety class, a flame effects operator safety class or demonstrate previous experience acceptable to the SFM.

7.11.4 Submit written verification with the application that the applicant has worked with a licensed display operator, special effects operator, or a flame effects operator for at least three shows or demonstrate previous experience acceptable to

the SFM.

7.12 Every person who wishes to secure an original flame effects performing artist operator license shall demonstrate proof of competence by:

7.12.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.12.2 The applicant is allowed to use the statute, the administrative rule, NFPA 160, and the Artisan and Performer Safety Standards prepared by the SFM.

7.12.3 Submit written verification with the application of having received a flame effects performing artist safety class or demonstrate previous experience acceptable to the SFM.

7.12.4 Submit written verification with the application that the applicant has worked with a licensed flame effects performing artist for at least five training meetings or practice sessions or demonstrate previous experience acceptable to the SFM.

7.13 The written examination stated in Section 7.11.1 or 7.12.1 shall be valid for five years from the date of the examination.

7.14 Applicants seeking an original license as stated in Sections 7.11 of these rules, may perform the various acts while under the direct supervision of a person holding a valid license for a period not to exceed 45 days. By the end of the 45 day period, the applicant shall have taken and passed the required examination and completed all other licensing requirements.

7.15 At the end of the five year period the licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.16 of these rules.

7.16 After the issuance of the original license, and each year thereafter, the display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete a minimum of one of the following:

7.16.1 Complete one show or performance annually

7.16.2 Attend an operator safety class or flame effects performing artist meeting annually

7.16.3 Work with another licensed display operator, special effects operator, flame effects operator, or flame effects performing artist with a show annually to demonstrate proof of competence.

7.17 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Sections 7.11 or 7.12 of these rules.

7.18 Every person who wishes to secure a display operator, special effects operator, flame effects operator, or flame effects performing artist license shall be at least 21 years of age.

7.19 Every licensed display operator, special effects operator, flame effects operator, or flame effects performing artist shall complete an After Action Report within ten (10) working days after the conclusion of any show and send it to the State Fire Marshal. If there are more than one licensed operator involved in the show, only one After Action Report needs to be sent to the State Fire Marshal for that show.

#### **R710-2-8. Importer or Wholesaler License.**

8.1 Application for an importer or wholesaler license shall be made in writing on forms provided by the SFM.

8.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be

signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

8.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Original licenses issued on or after October 1st, will be valid through December 31st of the following year.

8.4 The SFM may refuse to renew any license pursuant to Section 9 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 9 of these rules.

8.5 Every licensee shall notify the SFM within thirty (30) days of any change of address or location.

8.6 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

8.7 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

8.8 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

#### **R710-2-9. Adjudicative Proceedings.**

9.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

9.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, licensee, person employed for, the person having authority and management of a concern commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 The person of applicant provides material misrepresentation or false statement on the application.

9.2.3 The person or applicant refuses to allow inspection by the AHJ.

9.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the written examination, demonstrate practical skills or complete the safety class.

9.2.5 The person or applicant has been convicted of one or more federal, state or local laws.

9.2.6 Failure to accurately complete the After Action Report.

9.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

9.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

9.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of being an importer, wholesaler, display operator, special effects operator, flame effects operator or flame effects performing artist.

9.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

9.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within

a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

9.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

#### **R710-2-10. Amendments and Additions.**

10.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

10.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

10.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

10.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

10.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

10.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

10.2.1.3.1 In self storage units where the owner allows it.

10.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

10.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

10.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

10.2.1.3.5 Wholesalers warehouse.

10.2.1.3.6 An approved Group M occupancy.

10.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

10.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

10.2.2 All other periods of time, except those stated in Section 9.2.1 of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

10.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

10.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

#### **R710-2-11. Fire Department Displays.**

11.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to

protect.

11.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete an After Action Report and send it to the State Fire Marshal.

11.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class and examination on-line yearly to be allowed in the discharge area during the display. A copy of the completed certificate shall be sent to the SFM yearly to be placed in the fire department file.

11.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

**KEY: fireworks**

**July 8, 2011**

**Notice of Continuation June 4, 2007**

**53-7-204**

**R710. Public Safety, Fire Marshal.****R710-8. Day Care Rules.****R710-8-1. Adoption of Codes.**

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.2 Copies of the above codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

**R710-8-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

2.4 "Day Care Facility" means any building or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

2.5 "Day Care Center" means providing care for five or more clients in a place other than the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

2.6 "Family Day Care" means providing care for clients listed in the following two groups:

2.6.1 Type 1 - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care.

2.6.2 Type 2 - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

2.7 "ICC" means International Code Council, Inc.

2.8 "IFC" means International Fire Code.

2.9 "NFPA" means National Fire Protection Association.

2.10 "SFM" means State Fire Marshal.

**R710-8-3. Amendments and Additions.****3.1 Exemptions**

3.1.1 Places of religious worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.

**3.2 Fire Code Amendments**

3.2.1 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Educational Group E, Day Care, is amended as follows: On line three delete the word "five" and replace it with the word "four".

3.2.2 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Institutional Group I-4, day care facilities, Child care facility, is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

3.2.3 IFC, Chapter 46, Section 4603.6.1 Group E is deleted.

**3.3 Family Day Care**

3.3.1 Family Day Care units shall have on each floor

occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.

3.3.2 Family Day Care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.

3.3.2.1 Type 1 Family Day Care units, located on the ground level or in a basement, may use an emergency escape or rescue window as allowed in IFC, Chapter 10, Section 1029.

3.3.3 Family Day Care units shall not be located above the second story.

3.3.4 In Family Day Care units, clients under the age of two shall not be located above or below the first story.

3.3.4.1 Clients under the age of two may be housed above or below the first story where there is at least one exit that leads directly to the outside and complies with IFC, Section 1009 or Section 1010 or Section 1026.

3.3.5 Family Day Care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

3.3.6 Family Day Care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10, Standard for Portable Fire Extinguishers.

3.3.7 Family Day Care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

3.3.8 Rooms in Family Day Care units that are provided for clients to sleep or nap, shall have at least one window or door approved for emergency escape.

3.3.9 Fire drills shall be conducted in Family Day Care units quarterly and shall include the complete evacuation from the building of all clients and staff. At least annually, in Type I Family Day Care units, the fire drill shall include the actual evacuation using the escape or rescue window, if one is used as a substitute for one of the required means of egress.

**3.4 Day Care Centers**

3.4.1 Day Care Centers shall comply with either I-4 requirements or E requirements of the IBC, whichever is applicable for the type of Day Care Center.

3.4.2 Emergency Evacuation Drills shall be completed as required in IFC, Chapter 4, Section 405.

**3.5 Requirements for all Day Care**

3.5.1 Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

3.5.2 A fire escape plan shall be completed and posted in a conspicuous place. All staff shall be trained on the fire escape plan and procedure.

3.5.3 The AHJ shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

3.5.3.1 For Day Care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

**R710-8-4. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

**R710-8-5. Validity.**

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the

codes hereby adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

**R710-8-6. Conflicts.**

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

**R710-8-7. Adjudicative Proceedings.**

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving the final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire prevention, day care**

**July 8, 2011**

**53-7-204**

**Notice of Continuation March 16, 2007**

**R710. Public Safety, Fire Marshal.****R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.****R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention and Safety Act", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, and amendments and additions.

1.4 There is further adopted as part of these rules the following codes which are incorporated by reference:

1.4.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act, except as amended by provisions listed in R710-9-10, et seq.

1.5 Copies of the above code are on file in the Division of Administrative Rules and the Office of the State Fire Marshal.

**R710-9-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

2.5 "Division" means State Fire Marshal.

2.6 "IFC" means International Fire Code.

2.7 "LFA" means Local Fire Authority.

2.8 "Restricted Account" means Firefighter Support Restricted Account.

2.9 "SFM" means State Fire Marshal or authorized deputy.

2.10 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.11 "UCA" means Utah Code Annotated, 1953.

**R710-9-3. Conduct of Board Members and Board Meetings.**

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

**R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.**

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

**R710-9-5. Procedures to Amend the International Fire Code.**

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and

may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

**R710-9-6. Fire Advisory and Code Analysis Committee.**

6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

6.2.1 A representative from the State Fire Marshal's Office.

6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

6.2.4 A representative from the Department of Health.

6.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

6.2.6 A representative from the Department of Human Services.

6.2.7 A representative from Forestry, Fire and State Lands.

6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

6.5 The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

**R710-9-7. Enforcement of the Rules of the State Fire Marshal.**

7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

7.4.2 Public and private schools.

7.4.3 Privately owned colleges and universities.

7.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

7.4.5 Places of assembly as defined in Section 9-2 of this rule.

7.5 The Board shall require prior to approval of a grant the following:

7.5.1 That the applying fire agency be actively

participating in the statewide fire statistics reporting program.

7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

**R710-9-8. Fire Prevention Board Budget and Amendment Sub-Committees.**

8.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

8.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

8.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

**R710-9-9. Firefighter Support Restricted Account.**

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of its members to act in the position of chair, the chair shall serve for a term of one year, and the chair shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

**R710-9-10. Regulation of Novelty Lighters.**

10.1 All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy and Novelty Lighter Initiative, Toy-like Lighters Disavowed List, <http://publicsafety.utah.gov/firemarshal>, shall not be sold or offered for sale in the State of Utah.

**R710-9-11. Amendments and Additions.**

The following amendments and additions are hereby



adopted by the Board for application statewide:

11.1 IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: 903.3.1.1.2 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction in the dwelling unit portion of an occupancy, installed in accordance with NFPA 13, is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

11.2 IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: 903.3.1.2.2 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction in the dwelling unit portion of an occupancy, installed in accordance with NFPA 13R, is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

11.3 IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: 903.3.1.3.1 Antifreeze Limitations. The use of antifreeze in automatic sprinkler systems in new construction installed in accordance with NFPA 13D, is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze shall be limited to a maximum concentration of 40% propylene glycol or 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

11.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Antifreeze Replacement. Whenever the automatic sprinkler system protecting residences and dwelling units of mixed occupancies that use antifreeze is drained, the replacement antifreeze shall be properly mixed and tested, but shall not exceed a maximum concentration of 40% propylene glycol or a maximum concentration of 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.

#### **R710-9-12. Repeal of Conflicting Board Actions.**

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

#### **R710-9-13. Validity.**

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

#### **R710-9-14. Adjudicative Proceedings.**

14.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

14.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

14.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

14.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section

63G-4-201.

14.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

14.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

14.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

14.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire prevention, law**

**July 8, 2011**

**Notice of Continuation June 8, 2007**

**53-7-204**

**R714. Public Safety, Highway Patrol.****R714-600. Performance Standards for Tow Truck Motor Carriers.****R714-600-1. Authority.**

This rule is authorized by Subsection 41-6a-1406(10) which provides that the department shall make rules setting the performance standards for towing companies to be used by the department.

**R714-600-2. Purpose.**

The purpose of this rule is to establish procedures for a tow truck to be dispatched when a sworn officer requests the removal and towing of a motor vehicle.

**R714-600-3. Definitions.**

(1) Definitions used in the rule are found in Sections 41-6a-102, 53-10-102, 69-2-2, and 72-9-102.

(2) In addition:

(a) "department dispatch center" means a dispatch center which is operated or maintained by the department;

(b) "department dispatcher" means an employee of a dispatch center operated or maintained by the department whose primary duties are to receive calls for emergency police, fire, and medical services, and to dispatch the appropriate personnel and equipment in response to the calls;

(c) "dispatch center" means a facility which acts as a public safety answering point and provides emergency dispatch and communications support to sworn officers;

(d) "sworn officer" means a peace officer who is employed by the department;

(e) "tow truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control;

(f) "tow truck motor carrier" means any company that provides for-hire, private, salvage, or repossession towing services and includes all of the company's agents, officers, representatives and employees; and

(g) "UHP" means the Department of Public Safety, Utah Highway Patrol.

**R714-600-4. Dispatch of a Tow Truck.**

(1) When a sworn officer determines that a vehicle must be removed from a highway or other place, the sworn officer shall contact the dispatch center which provides service for that area and request that a tow truck motor carrier be contacted so a tow truck can be dispatched.

(2) The sworn officer will provide the dispatch center with the location, make, model and license number of the vehicle that is to be removed.

(3) If the dispatch center is operated or maintained by the department, the dispatch center shall determine which tow truck motor carrier to contact according to this rule.

(4) Nothing in this rule precludes the owner of a vehicle from contacting a tow truck motor carrier directly to make arrangements for the removal of the vehicle.

**R714-600-5. The Creation and Maintenance of a Towing Rotation List.**

(1)(a) The UHP may assign a coordinator in each section office to create and maintain a towing rotation list of approved tow truck motor carriers in the area.

(b) If a towing rotation list is created, the coordinator shall be responsible for providing a copy of the current towing rotation list to the dispatch center that provides dispatch services for the area.

(2)(a) In order to be considered for inclusion on a UHP towing rotation list in a particular area, a tow truck motor carrier shall complete a UHP Towing Rotation Application and Agreement and submit it to the coordinator who is responsible for that area.

(b) A tow truck motor carrier shall complete a new UHP Towing Rotation Application and Agreement on or before July 1<sup>st</sup> of each year.

(c) A truck motor carrier may be included on the towing rotation list, if it meets the requirements described in the UHP Towing Rotation Application and Agreement.

(3) The towing rotation list will contain the following information on each tow truck motor carrier:

(i) the business name and phone number of the tow truck motor carrier;

(ii) the names and phone numbers of all tow truck operators;

(iii) after-hours contact information for the tow truck motor carrier; and

(iv) whether the tow truck motor carrier has the ability to perform any special services.

(4) A tow truck motor carrier must notify the coordinator if the tow truck motor carrier is out of service or unavailable so the tow truck motor carrier may be temporarily removed from the towing rotation list.

(5)(a) A tow truck motor carrier may be permanently removed from the towing rotation list, after notice and an opportunity to respond to the allegations, if any of the following occur:

(i) a tow truck motor carrier fails to comply with any of the requirements found in Title 72, Chapter 9, Part 6, of the Utah Code or R909-19 and R873-22M-17 of the Utah Administrative Code;

(ii) a tow truck motor carrier is operating in violation of the law or has engaged in practices which are a violation of law;

(iii) a tow truck motor carrier's continued unavailability disrupts the operation of a department dispatch center;

(iv) a tow truck motor carrier routinely fails to respond to requests for service in a timely manner;

(v) a tow truck motor carrier refuses to retrieve abandoned vehicles; or

(vi) a tow truck motor carrier violates any of the terms and conditions contained in the UHP Towing Rotation Application and Agreement.

**R714-600-6. Dispatch of Tow Truck Motor Carriers by the Department.**

(1)(a) When a sworn officer contacts a department dispatch center and requests that a tow truck motor carrier be dispatched, a department dispatcher will immediately contact a tow truck motor carrier on the towing rotation list provided by the coordinator for that area.

(b) Department dispatchers will contact tow truck motor carriers in the order they appear on the towing rotation list.

(2) Department dispatchers will provide the tow truck motor carrier with information regarding the nature of the call so the tow truck motor carrier may determine if the tow truck motor carrier is able to handle the call.

(3)(a) If a tow truck motor carrier fails to respond when contacted by a department dispatcher or the tow truck motor carrier is unable to respond to the call, the department dispatcher will contact the next tow truck motor carrier on the towing rotation list.

(b) A tow truck motor carrier who fails to respond or who is unable to respond to a call, will not be contacted by a department dispatcher until the next time that the tow truck motor carrier's name appears on the towing rotation list.

(4)(a) If a department dispatcher contacts a tow truck motor carrier who is available but is not equipped for the

specific type of service requested, the department dispatcher will continue to contact tow truck motor carriers on the towing rotation list until a tow truck motor carrier is found who is equipped to handle the request for service.

(b) A tow truck motor carrier's inability to provide requested services for lack of equipment, does not affect the tow truck motor carrier's place on the towing rotation list.

(5) If a tow truck motor carrier responds to a call from dispatch but tow services are later determined not to be necessary, the tow truck motor carrier will be contacted the next time that tow services are needed.

(6) If a tow truck motor carrier responds to a department dispatcher's request for service and arrives at the location specified by the sworn officer, the tow truck motor carrier must provide the requested services unless the tow truck motor carrier is mechanically unable to do so.

(7) The performance of tow services that are not at the request of a department dispatcher will not affect the tow truck motor carrier's place on the towing rotation list.

(8)(a) Each department dispatch center shall maintain a log of all of the requests for service made to certified tow truck motor carriers.

(b) The log of requests for service shall contain the following information:

- (i) the date and time of the call for service;
- (ii) the officer requesting service;
- (iii) the reason for the request;
- (iv) the description of the vehicle, including the license plate number;
- (v) the location of the vehicle;
- (vi) the certified tow truck motor carrier contacted;
- (vii) whether the tow truck motor carrier responded to the request for service; and
- (viii) the department dispatcher's initials and any remarks.

**KEY: towing, motor carrier, law enforcement**  
**August 1, 2011** **41-6a-1406**  
**Notice of Continuation August 3, 2009** **53-1-106(1)(a)(I)**

**R746. Public Service Commission, Administration.****R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.****R746-343-1. Purpose and Authority.**

This rule is to establish a program as required in Section 54-8b-10 which will provide telecommunication devices to certified deaf, or severely hearing or speech impaired persons, who qualify under certain conditions, and to provide a dual relay system using third party intervention to connect deaf or severely hearing or speech impaired persons with normal hearing persons by way of telecommunication devices.

**R746-343-2. Definitions.****A. Definitions**

1. "Applicant" is a person applying for a Telecommunication Device for the Deaf, signal device, or other communication device.

2. "Audiologist" is a person who has a Master's or Doctoral degree in Audiology, is licensed in Audiology in Utah, and holds the Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association, or its equivalent.

3. "Deaf" is a hearing loss that requires the use of a TDD to communicate effectively on the telephone.

4. "Provider" is a service provider who agrees to be, if determined by the Public Service Commission, the administrator of the program or a portion of the program.

5. "Distribution center" is a facility authorized by the provider to distribute TDDs and signal devices, personal communicators, or other devices required by a recipient to communicate effectively on the telephone.

6. "Dual relay system" is the provision of voice and teletype communication between users of TDDs and other parties.

7. "Otolaryngologist" is a licensed physician specializing in ear, nose and throat medicine.

8. "Recipient" is a person who receives a TDD, signal device, personal communicator, or other device to communicate effectively on the telephone.

9. "Speech language pathologist" is a person who has a Master's or Doctoral degree in Speech Language Pathology in Utah, and holds the Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association, or its equivalent.

10. "Severely hearing impaired" is a hearing loss that requires use of TDD to communicate effectively on the telephone.

11. "Severely Speech Impaired" is a speech handicap, or disorder, that renders speech on an ordinary telephone unintelligible.

12. "Signal device" is a mechanical device that alerts a deaf, deaf-blind, or severely hearing impaired person of an incoming telephone call.

13. "Telecommunications Device for the Deaf, or TDD, is an electrical device for use with a telephone that utilizes a key board. It may also have an acoustic coupler, display screen or braille display to transmit and receive messages.

14. "Telephone relay center" is a facility administered by the provider to provide dual relay service.

15. "Commission" is the Utah Public Service Commission.

**R746-343-3. Eligibility Requirements.**

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a

state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

**R746-343-4. Approval of an Application.****A. Approved Application--**

1. When an original application has been approved, the provider shall inform the applicant in writing of:

- a. when the original application has been approved;
- b. the location of the distribution center or designated place where the applicant may receive a TDD;
- c. the date and time of the training session as required in Section R746-343-8.

2. When the request for a replacement TDD, signal device, or other device has been approved, the provider or the distribution center shall inform the recipient of the procedure for obtaining a replacement device.

B. Denied Applications--If an original application or replacement request is denied, the provider shall inform the applicant in writing of the reasons for the denial and of applicable procedures for appeal. Denial notices shall be sent by certified mail with return receipt. The notice shall be accompanied by instructions on the review process.

**R746-343-5. Review by the Provider.**

A. An applicant or recipient whose request for an original or replacement device has been denied may request that the provider review the decision.

B. The request for review shall be in writing and shall specify the basis for review and must be received by the provider within 30 days of the receipt of the notice of denial.

C. Within ten days of receiving the request for review, the provider shall inform the applicant or recipient in writing of the disposition of the request.

**R746-343-6. Review by the Commission.**

A. Within 20 days of the notice of denial from the provider for review, the applicant or recipient may request in writing a hearing by the Commission. The request shall specify the reasons for challenging the decision.

**R746-343-7. Distribution Process.****A. Distribution Centers shall:**

1. Upon notice from the provider, distribute TDDs, signal devices, or other specified devices, to persons determined eligible under Section R746-343-3, Eligibility Requirements, and who reside in Utah;

2. Require each recipient or legal guardian to sign an agreement, Condition of Acceptance, form supplied by the provider;

3. Forward completed application forms and agreement forms to the provider;

4. Inform the provider of those applicants who fail to report for training and receipt of devices.

B. The provider shall implement a program to facilitate distribution of devices and provide training as required.

C. Neither the distribution center nor the provider shall be responsible for providing replacement paper for devices, the payment of the recipient's monthly telephone bill, purchase or lease cost of recipient's telephone, or the cost of replacement light bulbs for signal devices.

**R746-343-8. Training.**

A. The provider shall be responsible for seeing that training is provided to each recipient and legal guardian, or significant other, in accordance with guidelines established by the provider.

**R746-343-9. Replacement Devices.**

A. The distribution center shall provide devices to persons determined by the provider to be eligible under Sections R746-343-3, Eligibility Requirements, and R746-343-8, Training, accept devices that need repair, and deliver devices returned by recipients to a repair center designated by the provider.

**R746-343-10. Ownership and Liability.**

A. TDDs, signal devices, and other devices provided by this program are the property of the state.

B. A recipient or guardian shall return a TDD, signal device, or other device, to the provider or distribution center when the recipient no longer intends to reside in Utah, is no longer qualified for the program, does not need the device, or has been notified by the provider to return the device.

C. Other than normal usage, recipients are liable for damage to or loss of a device issued under conditions of acceptance.

**R746-343-11. Out of State Use.**

No person shall remove a TDD, signal device, or other device from the state for a period longer than 90 days without written permission of the provider.

**R746-343-12. Dual Relay Service--Telephone Relay Center.**

A. A telephone relay center shall provide dual relay service seven days a week, 24 hours a day, including holidays.

B. A telephone relay center shall hire operators with specialized communication skills who shall be salaried employees.

C. A telephone relay center shall require the operators to relay each message accurately, except as otherwise specifically provided in Section R746-343-14, Criminal Activity.

**R746-343-13. Confidentiality and Privacy Requirements.**

A. Except as otherwise specifically provided in Section R746-343-14, Criminal Activity, a telephone relay center shall protect the privacy of persons to whom relay services are provided and shall require each operator to maintain the confidentiality of each telephone message.

B. The confidentiality and privacy of persons to whom relay services are provided will be protected by means of the following:

1. The relay center shall not maintain any form of permanent copies of messages relayed by their operators or allow the content of telephone messages relayed by their operators to be communicated to non-staff members.

2. Persons using the relay system shall not be required to provide identifying information until the party they are calling is on line, and shall only be required to identify themselves to the extent necessary to fulfill the purpose of their call.

3. Relay operators shall not leave messages with third parties unless instructed to do so by the person making the call.

4. Persons using the relay system may file complaints about the relay service to the telephone relay center or the provider, who shall review each complaint.

**R746-343-14. Criminal Activity.**

A. Relay operators shall not knowingly transmit telephone messages that are made in furtherance of a criminal activity as defined by Utah or federal law.

B. The confidentiality and privacy requirements of Section R746-343-13, Confidentiality and Privacy Requirements, do not apply to telephone conversations made in furtherance of a

criminal activity as defined by Utah or federal law.

**R746-343-15. Surcharge.**

A. The surcharge will be imposed on each telephone number of each residential and business customer in this state.

B. The surcharge established by the Commission in accordance with Subsection 54-8b-10(4) is \$.06 per month for each residential and business telephone number, subject to the limitation on surcharges related to mobile telecommunication service specified in Utah Code Ann. Subsection 54-8b-10(4)(b)(ii).

C. Subject to Subsection R746-343-15(D), the telephone number surcharge will be collected by each telecommunications corporation providing public telecommunications service to the customer and submitted, less administrative cost, to the Public Service Commission on a quarterly basis.

D. The provider will submit its budget for annual review by the Public Service Commission.

E. The telephone surcharge need not be collected by a telecommunications corporation if the amount collected would be less than the actual administrative costs of that collection. In that case, the telecommunications corporation shall submit to the Commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated costs and the expected revenue from the collection showing that the costs exceed the revenue.

**KEY: public assistance, physically handicapped, rates, telecommunications**

**August 1, 2011**

**54-8b-10**

**Notice of Continuation December 13, 2007**

**R765. Regents (Board of), Administration.****R765-609. Regents' Scholarship.****R765-609-1. Purpose.**

The Regents' Scholarship encourages Utah high school students to prepare for college academically and financially by taking a core course of study in grades 9-12 and saving for college. This statewide scholarship is aligned with the Utah Scholars Core Course of Study which is based on national recommendations as outlined by the State Scholars Initiative. The courses required by the scholarship are proven to help students become college and career ready. In addition, this scholarship encourages high school students to complete meaningful course work through their senior year.

**R765-609-2. References.**

2.1. Utah Code Ann. Section 53B-8-108 et seq., Regents' Scholarship Program.

2.2. Utah Admin. Code Section R277-700-6, High School Requirements (Effective for graduating students beginning with the 2010-2011 School Year).

2.3. Regents' Policy and Procedures R604, New Century Scholarship.

**R765-609-3. Definitions.**

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents.

3.2. "Base award" means a one-time scholarship to be awarded to applicants who complete the eligibility requirements of section 4.1 of this policy.

3.3. "Board" means the Utah State Board of Regents.

3.4. "Core Course of Study" means the Utah Scholars Core Course of Study taken during grades 9-12, which includes:

3.4.1. 4.0 credits of English;

3.4.2. 4.0 credits of mathematics taken in a progressive manner (at minimum Algebra I, Geometry, Algebra II, and a class beyond Algebra II or Math 3);

3.4.3. 3.5 credits of social studies;

3.4.4. 3.0 credits of lab-based natural science (one each of Biology, Chemistry, and Physics); and

3.4.5. 2.0 credits of the same world or classical language, other than English, taken in a progressive manner.

3.5 "Eligible Institutions" means USHE, or at any private, nonprofit institution of higher education in Utah accredited by the Northwest Association of Schools and Colleges.

3.6. "Exemplary Academic Achievement award" means a renewable scholarship to be awarded to students who complete the eligibility requirements of section 4.2 of this policy.

3.7. "Full-time" means a minimum of twelve college credit hours.

3.8. "High school" means a public school established by the Utah State Board of Education or private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.9. "Home-schooled" refers to a student who has not graduated from a Utah high school and received letter grades for the Core Course of Study in grades 9-12.

3.10. "Recipient" means a student who receives an award under the requirements set forth in this policy.

3.11. "Regents' Diploma Endorsement" means a certificate or transcript notation that may be awarded to students who qualify for the Exemplary Academic Achievement award of the Regents' Scholarship.

3.12. "Reasonable progress" means enrolling and

completing at least twelve credit hours during Fall and Spring semesters and earning a 3.0 GPA or higher each semester.

3.13. "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester GPA and a detailed schedule providing proof of full-time enrollment for the semester which the recipient is seeking award payment.

3.14. "Scholarship Review Committee" means the committee approved to review Regents' Scholarship applications and make final decisions regarding awards.

3.15. "Two years of full-time equivalent enrollment" means the equivalent of four semesters of full-time enrollment (minimum of twelve credit hours per semester).

3.16. "UESP" means the Utah Educational Savings Plan.

3.17. "USHE" means the Utah System of Higher Education, which includes the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie State College of Utah, Utah Valley University, and Salt Lake Community College.

**R765-609-4. Conditions of the Regents' Scholarship Program and Program Terms.**

4.1. Base Award: To qualify for the Regents' Scholarship Base award, the applicant shall satisfy the following criteria:

4.1.1. Complete the Core Course of Study as defined in section 3.4 of this policy.

4.1.2. GPA: The applicant shall demonstrate completion of the Core Course of Study with a cumulative high school GPA of at least 3.0.

4.1.3. Minimum Grade requirement: the applicant shall have no individual core course grade lower than a "C" on a transcript. Certain courses may receive a weighted grade as outlined under subsection 9.5 of this policy.

4.1.4. ACT Score: The applicant shall submit at least one verified ACT score.

4.1.5. Utah High School Graduation: The applicant shall have graduated from a Utah high school.

4.1.6. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.1.7. No Criminal Record Requirement: A recipient shall not have a criminal record; with the exception of a misdemeanor traffic citation.

4.1.8. Mandatory Fall Term Enrollment: A recipient shall enroll full-time at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral from the Board under subsection 7.2.

4.1.9. New Century Scholarship: A recipient shall not receive a Regents' Scholarship and the New Century Scholarship established in Utah Code Section 53B-8-105 and administered in R604.

4.2. Exemplary Academic Achievement award: To qualify for the Regents' Scholarship Exemplary Academic Achievement award, the applicant shall satisfy all requirements for the Base award, and additionally meet all of the following requirements:

4.2.1. Required GPA: The applicant shall have a cumulative high school GPA of at least 3.5.

4.2.2. Minimum Grade requirement: the applicant shall have no individual core course grade lower than a "B" on a transcript. Certain courses may receive a weighted grade as outlined under subsection 9.5 of this policy.

4.2.3 Required ACT Score: The applicant shall submit a verified composite ACT score of at least 26.

4.2.4. Duty of Student to Report Reasonable Progress Toward Degree Completion: In order to renew the Exemplary Academic Achievement Award, the recipient shall submit renewal documents, providing evidence of reasonable progress toward degree completion.

4.2.4.1. If the recipient fails to maintain a 3.0 GPA in a single semester the recipient is placed on probation and shall earn a 3.0 GPA or better the following semester to maintain eligibility. If the recipient again at any time earns less than a 3.0 GPA or fails to enroll and complete twelve credit hours, except as outlined in section 7.2 of this policy, the scholarship will be revoked.

4.2.4.2. Each semester, the recipient shall submit renewal documents to the Scholarship Review Committee providing evidence of making reasonable progress, by the deadlines listed below:

4.2.4.2.1. For Fall semester renewal documents shall be submitted by September 30.

4.2.4.2.2. For Spring/Winter semester renewal documents shall be submitted by February 15.

4.2.4.2.3. For Summer semester renewal documents shall be submitted by June 30.

4.2.4.2.4. If the recipient is attending Brigham Young University during Spring term renewal documents shall be submitted by May 30.

4.2.5. A recipient will not be required to enroll full-time if the student can complete his/her degree program with fewer credits.

4.3. Replacing Low Grades by Retaking a Course: An applicant may retake a course to replace a low grade received. When retaking courses to replace a grade the following subsections apply:

4.3.1. The Entire Course: The applicant shall either (1) retake the entire original course, or (2) complete an approved course equal to or greater in credit value in the same subject-area. The math and foreign language requirement of progression shall be shown. This is true even if the applicant only received a lower grade in a single semester, term, trimester, or quarter.

4.3.2. The Higher of Two Grades: The higher of two grades in the same or an approved course will count towards meeting the scholarship requirements.

4.3.3. Approved Courses and Progression Determined by the Regents' Scholarship Review Committee: The Regents' Scholarship Review Committee reserves the right to determine if the repeated course qualifies as an approved course in the same subject-area and if progression is required and demonstrated.

4.4. Student Transfer: A scholarship may be transferred to a different eligible institution upon request of the student.

4.5. "P" and "I" Grades not Accepted: Pass/fail or incomplete grades do not meet the minimum grade requirement, nor do they qualify toward the scholarship renewal requirements.

#### **R765-609-5. Application Procedures.**

5.1. Application Deadline: Applicants shall submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year that they graduate from high school. A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority or consideration for the scholarship.

5.2. Required Documentation: Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all course and GPA requirements, or if any information, including the attestation of criminal record or citizenship status, proves to be falsified the scholarship award may be denied. Required documents that shall be submitted with a scholarship application include:

5.2.1. the official online application;

5.2.2. an official high school paper or electronic transcript, official college transcript(s) when applicable, and any other miscellaneous transcripts demonstrating all completed courses and GPA. A final transcript showing the last semester of

coursework will be requested if the student is found conditionally approved, meaning that the student appears to be on track to receive the scholarship;

5.2.3. verified ACT score(s); and

5.2.4. a class schedule form, provided by the Board, demonstrating the courses and credits that the student will complete during grade twelve. Simply submitting a high school transcript does not satisfy this requirement.

5.3. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, and will not be reviewed.

#### **R765-609-6. Amount of Awards and Distribution of Award Funds.**

6.1. Funding Constraints of Awards: The Board may limit or reduce the Base award and/or the Exemplary Academic Achievement award, as well as supplemental awards granted, depending on the annual legislative appropriations and the number of qualified applicants.

6.2. Amount of Awards.

6.2.1. Base Award: The Base award of up to \$1,000 may be adjusted annually by the Board in an amount up to the average percentage tuition increase approved by the Board for USHE institutions.

6.2.2. Exemplary Academic Achievement Award: The Exemplary Academic Achievement award is up to the amount provided by law and as determined each spring by the Board based on legislative funding and the number of applicants. The Exemplary Academic Achievement award may be renewed for the shortest of the following:

6.2.2.1. Four semesters of full-time enrollment (minimum of twelve credit hours per semester);

6.2.2.2. Sixty-five credit hours; or

6.2.2.3. Until the student meets the requirements for a baccalaureate degree.

6.3. Distribution of Award Funds.

6.3.1. Enrollment Documentation: The award recipient shall submit to the Scholarship Review Committee a copy of the college class schedule verifying that the recipient is enrolled full-time (twelve or more credits) at an eligible institution. Documentation shall include the recipient's name, the semester the recipient will attend, the name of the institution they are attending and the number of credits for which the recipient is enrolled.

6.3.2. Award Payable to Institution: The award will be made payable to the institution. The institution may pay over to the recipient any excess award funds not required for tuition payments. Award funds shall be used for any qualifying higher education expense including: tuition, fees, books, supplies, equipment required for course instruction, or housing.

6.3.3. Credit Hours Dropped After Award Payment: If a recipient drops credit hours after having received the award which results in enrollment below twelve credit hours, the scholarship will be revoked.

6.4. UESP Supplemental Award to Encourage College Savings: Subject to available funding, an applicant who qualifies for the Base award is eligible to receive up to an additional \$400 in state funds to be added to the total scholarship award.

6.4.1. For each year the applicant is 14, 15, 16, or 17 years of age and had an active UESP account, the Board may contribute, subject to available funding, \$100 (i.e., up to \$400 total for all four years) to the recipient's award if at least \$100 was deposited into the account for which the applicant is named the beneficiary.

6.4.2. If no contributions are made to an applicant's UESP account during a given year, the matching amount will likewise be \$0.

6.4.3. If contributions total more than \$100 in a given

year, the matching amount will cap at \$100 for that year.

6.4.4. Matching funds apply only to contributions, not to transfers, earnings, or interest.

**R765-609-7. Time Constraints and Continuing Eligibility.**

7.1. Time Limitation: A Regents' Scholarship recipient shall use the award in its entirety within five years after his/her high school graduation date.

7.2. Deferral or Leave of Absence: A recipient shall apply for a deferral or leave of absence if they do not continuously enroll full-time.

7.2.1. Deferrals or leaves of absence may be granted, at the discretion of the Scholarship Review Committee, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

7.2.2. An approved deferral or leave of absence will not extend the time limits of the scholarship. The scholarship may only be used for academic terms which begin within five years after the recipient's high school graduation date.

7.3. No Guarantee of Degree Completion: Neither a Base award nor an Exemplary Academic Achievement award guarantees that the recipient will complete his or her associate or baccalaureate program within the recipient's scholarship eligibility period.

**R765-609-8. Scholarship Determinations and Appeals.**

8.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

8.2. Appeals: Applicants and recipients have the right to appeal an adverse decision.

8.2.1. Appeals shall be (postmarked) within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.

8.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

8.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

8.2.4. Appeals are not accepted for late document submission.

8.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

8.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the Regents' Scholarship address.

8.2.7. Appeals will be reviewed and decided by an appeals committee appointed by the Commissioner of Higher Education.

**R765-609-9. Rules for Completing Course Work.**

9.1. Although a course may meet state and individual district high school graduation requirements, the course may not meet the scholarship requirements. If a required course is not taught at the school the student attends they can elect to enroll in the Utah Electronic High School, distance education concurrent enrollment, or a course offered at another accredited Utah high school or college. Course work found at additional online sources shall be from an accredited institution approved by the Board.

9.2. Applicants are required to complete the entire curriculum for a course. For example, if a course is designed to be taken as a full year or for one full credit, the student shall

complete the entire course in order to have it count toward the completion of a requirement for the scholarship.

9.3. Course work that is "tested out" of is not accepted for the Regents' Scholarship.

9.4. In each content area, the courses completed shall be unique.

9.4.1. Students cannot take a standard course and then enroll in the honors version of the same class and count both toward meeting the credit requirement and, in cases, the requirement of progression.

9.4.2. Repeated course work does not count toward the credit fulfillment.

9.5. Weighted Grade: The grade earned in any course designated on the student's high school transcript as Advanced Placement (AP) or a college course concurrent enrollment shall be weighted (only if a college transcript is provided) according to the Scholarship Review Committee's standard procedures.

9.6. College Course Work: The Scholarship Review Committee reserves the right to apply a 3:1 ratio in relation to college course work. If an applicant enrolls in and completes a college course worth three or more college credits, this may be counted as one full credit toward the scholarship requirements. However, the student then is evaluated on the college grade earned, with weights added to the college grade earned.

**KEY: higher education, scholarships, secondary education  
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