R25. Administrative Services, Finance.
R25-5. Payment of Per Diem to Boards.
R25-5-1. Purpose.

The purpose of this rule is to establish the procedures for payment of per diem and travel expenses to defray the costs for attendance at an official meeting of a board by an officer or employee who is a member.

R25-5-2. Authority.

This rule is established pursuant to Section 63A-3-106, which authorizes the Director of Finance to make rules establishing per diem rates.

R25-5-3. Definitions.

All terms are as defined in Section 63A-3-106(1), except as follows:

(1) "Finance" means the Division of Finance.

(2) "Per diem" means an allowance paid daily.

(3) "Rate" means an amount of money.

(4) "Independent Corporation Board" means the board of directors of any independent corporation subject to Section 63E Chapter 2 that is subject to this rule by its authorizing statute.

R25-5-4. Rates.

(1) Each member of a board within state government shall receive $60 per diem for each official meeting attended that lasts up to four hours and $90 per diem for each official meeting that is longer than four hours.

(a) These rates are applicable to an officer or employee of the executive branch, except as provided under subsection (1)(b);

(b) These rates are applicable to an officer or employee of higher education unless higher education pays the costs of the per diem.

(2) Travel expenses shall also be paid to board members in accordance with Rule R25-7.

(3) Members may decline to receive per diem and/or travel expenses for their services.

(4) Upon approval by Finance, members of an independent corporation board may receive per diem, at rates exceeding those established in Subsection R25-5-4(1), for each meeting attended as part of their official duties and for reasonable preparation associated with meetings of the full board or the board's subcommittees.

R25-5-5. Governmental Employees.

(1) A member of a board may not receive per diem or travel expenses if the member is being compensated as an officer or employee of a governmental entity, including the State, while performing the member's service on the board.

Governmental employee board members attending official meetings held at a time other than their normal working hours, who receive no compensation or leave (such as comp time) for the additional hours of the meetings may receive per diem.

(2) Travel expenses related to the attendance of official board meetings for which a governmental employee serving on the board is not otherwise reimbursed may also be paid to the employee in accordance with Rule R25-7.

(3) Governmental employees may decline to receive per diem and/or travel expenses for their services.

R25-5-6. Payment of Per Diem.

All board members are paid their per diem through the payroll system in order to calculate and withhold the appropriate taxes.

KEY: per diem allowance, rates, state employees, boards
June 23, 2009 63A-3-106
Notice of Continuation April 15, 2013

R25. Administrative Services, Finance.
R25-6. Relocation Reimbursement.
R25-6-1. Purpose.

The purpose of this rule is to establish procedures for payment of relocation reimbursements to employees who move for career progression or to accept employment with the state.

R25-6-2. Authority.

This rule is established pursuant to Subsection 63A-3-103(1), which authorizes the Director of Finance to define fiscal procedures relating to approval and allocation of funds.

R25-6-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Career progression" means job advancement.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(6) "Relocation" means the distance between the employee's old residence and new job site must increase at least 50 miles over the distance between the old residence and the old job site.

(7) "Reimbursement" means money paid to compensate an employee for money spent.

R25-6-4. Approval of Relocation Reimbursement.

All relocation reimbursements require prior written approval of the department director or agency head.

R25-6-5. Eligible Employees.

(1) Relocation reimbursement costs shall be granted to employees who move due to an involuntary change in jobs.

(2) Relocation reimbursement costs may be granted to employees who move due to a voluntary change in jobs.

(3) Relocation reimbursement costs may be granted to new employees who are required by the employing agency to move to accept employment with the state.

(a) The amount of relocation costs to be reimbursed to new employees is a matter of negotiation between the department or agency and the employee, but shall be for only those categories of expenditures identified as reimbursable by Section R25-6-8 and shall not exceed those costs identified as reimbursable in Finance policy FIACCT 05-03.03, Employee Reimbursements - Relocation Reimbursement. Finance policies and procedures are available on the Internet at http://www.finance.utah.gov.

R25-6-6. Repayment of Reimbursement.

The employee shall agree in writing to repay any relocation expense if, within one year following the relocation, the employee terminates employment with the state or transfers to another department. Exceptions to repayment of the relocation expense must be approved in writing by the Director of Finance.

R25-6-7. Payment of Relocation Expenses.

(1) The employee makes all payments and then requests reimbursement from the state.

(2) The employee may receive an advance of up to 90 percent of the estimated cost of the moving company, the storage of goods, and/or the real estate fees.

R25-6-8. Reimbursable Categories of Expenditures.

(1) Based on Finance policy, costs reimbursable to an employee for relocation fall into the following broad categories:

(a) Mileage or common carrier expenses;

(b) Lodging and meal expenses;

(c) Costs of moving household goods and furniture; and

(d) Real estate expenses.

(2) The use of state equipment to move an employee or to pull a privately-owned trailer or trailer house is prohibited unless approved by the Director of Finance and the State Risk Manager.

R25-6-9. Maximum Reimbursement.

The maximum reimbursement for relocation costs may not exceed $10,000 unless approved in writing by the Director of Finance.

KEY: costs, finance, relocation benefits, reimbursements
July 2, 2002 63A-3-103
Notice of Continuation April 15, 2013

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules establishing per diem rates.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Per diem" means an allowance paid daily.

(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(7) "Rate" means an amount of money.

(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $38.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$9.00
Lunch	$13.00
Dinner	$16.00
Total	$38.00

(b) The daily travel meal allowance for out-of-state travel is $47.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$23.00
Total	$47.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Orlando, Atlanta, Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to $62 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the $62 premium allowance as follows:

(i) If breakfast is provided deduct $14, leaving a premium allowance for lunch and dinner of actual up to $48.

(ii) If lunch is provided deduct $19, leaving a premium allowance for breakfast and dinner of actual up to $43.

(iii) If dinner is provided deduct $29, leaving a premium allowance for breakfast and lunch of actual up to $33.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-5:59	6:00-11:59

*B, L, D	*L, D	*D	*no meals
In-State			
$38.00	$29.00	$16.00	$0
Out-of-State			
$47.00	$37.00	$23.00	$0

*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:00-5:59	6:00-11:59	12:00-6:59	7:00-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$9.00	$22.00	$38.00
Out-of-State			
$0	$10.00	$24.00	$47.00

*B=Breakfast, L=Lunch, D=Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns after 7 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meal Per Diem for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $65 per night for single occupancy plus tax except as noted in the table below:

TABLE 5

Cities with Differing Rates

American Fork	$75.00 plus tax
Beaver	$70.00 plus tax
Blanding	$75.00 plus tax
Bryce	$70.00 plus tax
Cedar City	$70.00 plus tax
Delta	$70.00 plus tax
Ephraim	$70.00 plus tax
Fillmore	$70.00 plus tax
Green River	$75.00 plus tax
Heber City / Midway	$90.00 plus tax
Kanab	$75.00 plus tax
Layton	$75.00 plus tax
Logan	$75.00 plus tax
Moab	$95.00 plus tax
Monticello	$70.00 plus tax
Nephi	$70.00 plus tax
Ogden	$75.00 plus tax
Park City	$90.00 plus tax
Price	$75.00 plus tax
Provo / Orem / Lehi	$75.00 plus tax
Roosevelt	$85.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	$95.00 plus tax
Springville	$70.00 plus tax
St George / Washington / Springdale	$75.00 plus tax
Torrey	$70.00 plus tax
Tremonton	$90.00 plus tax
Vernal	$90.00 plus tax
All Other Utah Cities	$65.00 plus tax

(3) State employees traveling less than 50 miles in excess of their normal office commute are not entitled to lodging reimbursement.

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to

minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $20.00 and for all airport parking.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt for amounts of $20 or more.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to $2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 55.5 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 55.5 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is

more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 55.5 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

July 1, 2012	**63A-3-107**
Notice of Continuation April 15, 2013	**63A-3-106**

R25. Administrative Services, Finance.
R25-8. Overtime Meal Allowance.
R25-8-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay meal allowances to state employees required to work in excess of regularly scheduled hours during a 24-hour period.

R25-8-2. Authority.

This rule is established pursuant to Subsection 63A-3-103(1), which authorizes the Division of Finance to define fiscal procedures relating to approval and allocation of funds.

R25-8-3. Definitions.

(1) "Overtime Meal allowance" means a sum of money given to state employees to pay for meals which may be authorized when work hours are in excess of regularly scheduled hours during a 24-hour period.

(2) "Department" means all executive departments of state government.

(3) "Finance" means the Division of Finance.

(4) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(5) "Rate" means an amount of money.

(6) "State employee" means any person who is paid on the state payroll system.

R25-8-4. Allowance.

(1) A state employee required to work in excess of regularly scheduled hours may be authorized by his department to receive a taxable meal allowance up to $10 during a 24-hour period if:

(a) The employee is not on travel status.

(b) The total hours worked during the 24-hour period shall be three hours or more in excess of the regularly scheduled hours.

(c) The allowance is not considered an absolute right of the employee, and is authorized at the discretion of the department head or his designee.

(d) The allowance may not be given in addition to any other meal allowance or per diem.

(e) The Employee Reimbursement/Earnings Request, form FI 48, should be completed and approved for the payment of the meal allowance.

KEY: finance, rates, state employees, allowance
July 1, 2008 63A-3-103
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R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-1. Special Orders of Liquor by Public.

(1) Purpose. A special order product is any product not listed on the department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Any state store may process special order requests.

(b) Any individual may place a special order at any state liquor store. Special orders may be placed by groups of individuals, organizations, or retail licensees either at a state liquor store or with the purchasing division of the department. A special order shall be processed as follows:

(i) A special order form must be filled out and signed by the customer for each special order product purchased. The state liquor store shall forward the form to the department's purchasing division.

(ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders.

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The department's special order buyer shall obtain a retail bottle price and call the customer and/or state liquor store for clearance to proceed with the order.

(viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

(ix) Special orders may only be placed by customers. State stores may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

R81-2-2. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the store manager to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(b) Saleable Product. Store managers are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the store manager. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500 the store manager shall fill out a A Returned Merchandise Acknowledgment Receipt@ (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-2-3. Warning Sign.

All state stores shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-2-4. Identification Guidelines to Purchase Liquor.

The department accepts only four forms of identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in

accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the department may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.

R81-2-5. Advertising.

The advertising or promotion of liquor products within state stores is prohibited. An employee may inform the customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

R81-2-6. Refusal of Service.

An employee of the store may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-2-7. Minors on Premises.

No person under the age of 21 years may enter a state liquor store unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the state liquor store.

R81-2-8. Accepting Checks as Payment for Liquor.

(1) A state liquor store may accept a check as payment for liquor from an individual customer only under the following conditions:

(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.

(b) The following must appear on the check:

(i) name (must be imprinted);

(ii) address (if post office box, the full address must be written in); and

(iii) telephone number (may be hand-written).

(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(d) The check must be made out for the exact amount of the purchase.

(e) An acceptable form of identification is required for any check written over $50.00, and may be required at the discretion of the cashier or store manager for any check written under $50.00. Acceptable forms of identification include those listed in R81-2-4.

(2) A state liquor store may accept a check as payment for liquor from a licensee only under the following conditions:

(a) The check must be imprinted with the name of the licensee's business, its business address, and its telephone number.

(b) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(c) The check must be made out for the exact amount of the purchase.

(3) A state liquor store may accept a business or company check as payment for liquor only under the following conditions:

(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.

(b) The check must be imprinted with the name of the business or company, its business address, and its telephone number.

(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(d) The check must be made out for the exact amount of the purchase.

(e) Further identification is not required.

(f) The department may place a maximum limit on the total dollar amount in checks a business or company may tender to the department in a 24 hour period.

(4) A state liquor store may accept a traveler's check as payment for liquor under the following conditions:

(a) Traveler's checks shall be in "US Dollars".

(b) Each traveler's check shall have been previously signed by the holder of the check at the issuing bank or company. The check shall then be signed a second time in front of the DABC store employee that is handling the sale. The store employee shall compare the two signatures to verify that the signatures match, and shall otherwise examine the check to verify its validity.

(c) Traveler's checks shall be made out to the Department of Alcoholic Beverage Control or "D.A.B.C."

(d) When accepting a traveler's check for $50.00 or more, the store employee shall:

(i) call the issuing bank or company and receive an authorization, and authorization number; and

(ii) check the identification of the customer. Acceptable forms of identification include those listed in R81-2-4.

(e) On the upper, left hand corner of a traveler's check for $50.00 or more, the employee shall write:

(i) the authorization number from the issuing bank or company;

(ii) the type of identification used including expiration date and individual's identification number; and

(iii) the store employee's initials.

R81-2-9. Accepting Credit Cards as Payment for Liquor.

(1) Purpose. This rule explains the procedures to be followed by state liquor store employees in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) The owner of the credit card must furnish the cashier with their actual credit card. No sale may be based on the customer merely furnishing a credit card number, or another person's credit card, including that of their spouse.

(b) The cashier shall examine the security features on the card such as signature, account number, expiration date, and hologram before accepting the card.

(c) The card must be signed by the card holder.

(d) If for any reason the credit card cannot be scanned, the cashier shall hand-key the credit card number into the cash register keyboard. If the transaction is approved, the cashier shall imprint a copy of the credit card, and have the card holder sign it.

(e) After the cashier scans or hand-keys a credit card, the credit card company may approve or reject the transaction. A rejection may indicate that the card has been stolen, the customer's account is over-drawn, the card has expired, or some other problem. The cashier may receive several messages from the credit card company.

(i) If the message is "decline" or "card not accepted", the cashier should return the card to the customer, suggest another form of payment, and suggest that the customer contact the

issuer of the card.

(ii) If the message is "call" or "call hold", the store employee should hold the card and either phone the credit card company's voice authorization center for more information, or enter a "code 10" request. The voice authorization center may instruct that the card be confiscated. The card should then be obtained only if it can be done by peaceful means, and if the card holder voluntarily agrees to surrender the card. The "code 10" request will result in the credit card company researching the status of the card and approving the transaction with a "yes" or rejecting the transaction with a "no" prompt. At no time should store employees put themselves at risk by confiscating a credit card against the desires of the cardholder. If the card can be willingly surrendered and confiscated, the store employee should destroy the card by cutting it in half lengthwise shortly after leaving the customer's presence. The card pieces should then be sent to the card owner's bank with a completed ABC Department LQ-55 form having been filled out by a store employee.

(f) Credit card receipts contain confidential information that must be safeguarded. Cashiers should not throw the receipts in the trash. State store managers and their employees should consult their regional manager concerning proper storage and disposal of receipts.

(g) Refunds, or exchanges of products of unequal value that were purchased with a credit card, shall be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.

(h) Licensee purchases may not be paid by credit card. Licensee purchases may be only in cash or by check.

R81-2-10. State Store Hours.

(1) Sale or delivery of liquor may not be made on the premises of any state store, nor may any state store be kept open for the sale of liquor:

(a) on any day prohibited by 32B-2-503(5);

(b) on any other day before 10 a.m. or later than 10 p.m.

(2) Subject to the restrictions of subsection (1), the department may adjust the sales hours for each state store based on such factors as the locality of the store, tourist traffic, demographics, population to be served, customer demand in the area, and budgetary constraints.

R81-2-11. Industry Members in State Stores.

An industry member, as defined in 32B-4-702, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

R81-2-12. Store Site Selection.

This rule is promulgated pursuant to Section 32B-2-202(1)(c)(ii) which requires that criteria and procedures be established for determining the location of a state store: Prior to the commission establishing a new state store, the Operations and Procurement Subcommittee will determine the feasibility of a new site, weigh options and consider the investigation and recommendation of the department as outlined in 32B-2-502 then make its recommendation to the commission.

KEY: alcoholic beverages
April 30, 2013 **32B-2-202**
Notice of Continuation May 10, 2011

R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-1. Licensing.

(1) Restaurant liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state recreational amenity on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 through -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4A-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a full service restaurant, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the restaurant premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of 32B-5-205.

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-204(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4A-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price

charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-205(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-205(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Liquor dispensing shall be in accordance with Section 32B-5-304; Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4A-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

R81-4A-9. Alcoholic Product Flavoring.

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4A-10. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4A-11. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4A-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4A-13. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4A-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

(1) When the entire restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4A-15. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-202 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-202 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-202(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-202(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages

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	32B-5-303(3)
	32B-6-202

R81. Alcoholic Beverage Control, Administration.
R81-4B. Airport Lounge Licenses.
R81-4B-1. Licensing.

Airport lounge liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

R81-4B-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an airport lounge license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority and airport authority, a copy of the sign proposed to be used to inform the public that alcoholic products are sold and consumed on the airport lounge premises, copy of current local business license(s) necessary for operation of a airport lounge, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the airport lounge premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-4B-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-504(4) may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4B-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4B-5. Airport Lounge Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an airport lounge liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee=s order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier=s check.

(3) The licensee or the licensee=s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4B-6. Airport Lounge Liquor Licensee Operating Hours.

Liquor sales shall be in accordance with Section 32B-6-505(5). However, licensees may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4B-7. Sale and Purchase of Alcoholic Beverages.

A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-505(4), shall be commenced upon the patron's first purchase and shall be maintained by the airport lounge during the course of the patron's stay at the airport lounge regardless of where the patron orders and consumes an alcoholic beverage. Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

R81-4B-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the airport lounge as approved by the department.

R81-4B-9. Alcoholic Product Flavoring.

Airport lounge licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the airport lounge license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No airport lounge employee under the age of 21 years may handle alcoholic product flavorings.

R81-4B-10. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4B-11. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

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32B-5
32B-6-201 through 505

R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-1. Licensing.

(1) Limited restaurant licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2) A limited restaurant license that wishes to operate the same licensed premises under the operational restrictions of a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same limited restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections 32B-5-201, -202 and 32B-6-702 to -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Limited restaurant licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with 32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the limited restaurant premises shall be deemed to remain on the floor plan of the limited restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4C-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a limited restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-304 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a limited restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the limited restaurant premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(3) Subsection (1)(a) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of 32B-5-205.

R81-4C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-304(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4C-5. Limited Restaurant Licensee Wine and Heavy Beer Order and Return Procedures.

The following procedures shall be followed when a limited restaurant licensee orders wine or heavy beer from or returns wine or heavy beer to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4C-6. Limited Restaurant Licensee Operating Hours.

Allowable hours of wine and heavy beer sales shall be in accordance with Section 32B-6-305(6). However, the licensee may open the wine and heavy beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4C-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the limited restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-305(4), shall be commenced upon the patron's first purchase and shall be maintained by the limited restaurant during the course of the patron's stay at the limited restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-

305(7).

(a) The limited restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, wine, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Wine dispensing shall be in accordance with Section 32B-5-304(2); and R81-1-11 (Multiple-Licensed Facility Storage and Service) of these rules.

R81-4C-8. Alcoholic Product Flavoring.

(1) Limited restaurant licensees may use alcoholic product flavorings including spirituous liquor products in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No limited restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4C-9. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) A wine service may be performed by the server at the patron's table, counter, or "grandfathered bar structure" for wine either purchased at the limited restaurant or carried in by a patron. The wine may be opened and poured by the server.

(2) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-4C-10. Consumption at Patron's Table, Counter, and Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4C-11. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each limited restaurant licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all wine, heavy beer, and beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4C-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4C-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed limited restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own wine, heavy beer or beer under the following circumstances:

(1) When the entire limited restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the limited restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4C-14. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-302 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a limited restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to 32B-6-302 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of 32B-6-302(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of 32B-6-302(1)(b)means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area

to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

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32B-6-301 through 305.1

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule. An on-premise banquet sublicense may be issued to a resort licensee pursuant to 32B-6-601 to -604. Any reference in the rules in this chapter 4D to an on-premise banquet license or licensee shall be interpreted as including an on-premise banquet sublicense or sublicensee.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals;

(iii) that is in total at least 30,000 square feet or until October 31, 2011 the facility is a "grandfathered facility" under 32B-6-603(4); and

(iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

R81-4D-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of an on-premise banquet license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-604 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of an on-premise banquet catering license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the on-premise banquet premise.

(2) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

(3)(a) All application requirements of Subsection (1)(a) and (2) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (3)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

(4) Pursuant to 32B-6-604(6)after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the

premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

(i) be clearly defined;

(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and

(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32B-5-301 to -308 and 32B-6-605.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-604(5)(d), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an on-premise banquet licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee=s order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier=s check.

(3) The licensee or the licensee=s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32B-6-605(8). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4D-7. Sale and Purchase of Alcoholic Beverages.

(1) The on-premise banquet licensee shall maintain at least 50% of its total business from the sale of food pursuant to Section 32B-6-605(9).

(a) The on-premise banquet licensee shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 50%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the on-premise banquet licensee as approved by the department.

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the on-premise banquet license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

R81-4D-11. Menus; Price Lists.

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(3) Any host of a contracted banquet shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32B-6-605(3).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that requires the commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under 32B-8 shall file with the department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

KEY: alcoholic beverages

April 30, 2013	**32-1-607**
Notice of Continuation July 31, 2008	**32B-2-202**
	32B-5
	32B-6-601 through 605

R81. Alcoholic Beverage Control, Administration.
R81-4E. Resort Licenses.
R81-4E-1. Licensing.

Resort licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

R81-4E-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a resort license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204 and 32B-6-204 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a resort license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the resort premise.

(2) Pursuant to 32B-5-203 and 32B-8-204, each sublicense of a resort license is not required to:

(a) submit an application or renewal application that is separate from the resort license application;

(b) carry public liability or dramshop insurance coverage that is separate from that carried by the resort licensee; or

(c) post a bond that is separate from the bond posted by the resort licensee if the aggregate of any bonds posted by the resort licensee covers each sublicense under the resort license.

(3) Pursuant to 32B-8-302, a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32B-8-204(3)(b), and this rule.

(4)(a) All application requirements of Subsections (1)(a) and (3) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-4E-3. Bonds.

No part of any corporate surety or cash bond required by Section 32B-5-204 and 32B-8-202(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate surety or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4E-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4E-5. Resort License Liquor Order and Return Procedures.

The following procedures shall be followed when a resort licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first served basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4E-6. Resort Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-8-304(4) and -401(2)(b). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4E-7. Sale and Purchase of Alcoholic Beverages in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.

(1) With respect to a restaurant sublicense or limited restaurant sublicense, alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant sublicense shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be

available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) Liquor dispensing shall be in accordance with Section 32B-5-304; and Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4E-8. Liquor Storage.

With respect to restaurant, on-premise banquet, resort spa, and club sublicenses, liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area as approved by the department.

R81-4E-9. Alcoholic Product Flavoring.

Resort licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours allowed by law. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No resort employee under the age of 21 years may handle alcoholic product flavorings.

R81-4E-10. Table and Counter Service.

A wine service may be performed by the server at the patron's table or counter for wine either purchased at a restaurant, limited restaurant, club, or resort spa sublicensed premises or carried in by a patron. The wine may be opened and poured by the server.

R81-4E-11. Consumption at Patron's Table or Counter in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.

(1) With respect to restaurant sublicenses and limited restaurant sublicenses, a patron's table or counter may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table or counter so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4E-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each restaurant, limited restaurant, on-premise banquet, resort spa, and club sublicensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer. With respect to on-premise banquet sublicenses, this list or menu need only be available to the host of a contracted banquet. With respect to limited restaurant sublicenses, the list or menu may only include wine, heavy beer, and beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A sublicensee or employee of a sublicensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4E-13. Identification Badge.

Each employee of a sublicensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The sublicensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4E-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a resort license, the proprietor may, at the proprietor's discretion, allow members of the private group to bring onto the resort premises, their own alcoholic beverages under the following circumstances:

(1) When the entire area is closed to the general public for the private event, or

(2) When an entire room or area within the premises such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the facility.

(3) This section does not apply to private banquet events conducted under the on-premise banquet sublicense.

R81-4E-15. Resort Spa Sublicense.

(1) Definitions.

(a) "Resort spa" means a facility within the boundary of a resort building that provides professionally administered personal care treatments such as, but not limited to, massages, facials, hair care, and nail care. Treatment providers must be licensed under Title 58, Division of Professional Licensing Act. The resort spa also must hold a license to conduct business as a spa or similar operation under local licensing laws.

(2) Application. Pursuant to 32B-5-203 and 32B-8-204 and -302, a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32B-8-302(2), and this rule.

(3) Minors in Lounge or Bar Areas.

(a) Pursuant to 32B-8-304(5), a minor may be on the premises of a resort spa if accompanied by a person 21 years of age or older, but may not be admitted into, use, or be on the premises of any lounge or bar area of a resort spa.

(b) "Lounge or bar area" includes:

(i) the bar structure as defined in 32B-1-102(7);

(ii) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(iii) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(c) A minor who is otherwise permitted to be on the premises of a resort spa may momentarily pass through the resort spa's lounge or bar area en route to those areas of the resort spa where the minor is permitted to be. However, no minor shall remain or be seated in the resort spa's bar or lounge area.

R81-4E-16. Applicability of Rules.

(1) 32B-8-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32B for the type of license applicable to the sublicense, except where otherwise provided. For example, a club sublicensee must comply with the operational restrictions found in 32B-5-301 to -310 and 32B-6-406 that are applicable to a

club licensee.

(2) This rule requires that a person operating under a resort sublicense comply with the operational restrictions found in any commission rule for the type of license applicable to the sublicense, except where otherwise provided.

KEY: alcoholic beverages
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32B-5
32B-8

R81. Alcoholic Beverage Control, Administration.
R81-4F. Reception Center Licenses.
R81-4F-1. Licensing.

(1) Effective November 1, 2011, before a person may store, sell, offer for sale, or furnish an alcoholic product on its premises as a reception center, the person shall first obtain a reception center license from the commission pursuant to 32B-6-803.

(2) A reception center licenses is issued to a person as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Section 32B-5-310.

R81-4F-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a reception center license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-804 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a reception center license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the reception center premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-4F-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-804(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4F-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4F-5. Reception Center Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a reception center licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4F-6. Reception Center Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-805(8). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4F-7. Sale and Purchase of Alcoholic Beverages.

(1) The reception center licensee may not maintain in excess of 30% of its total annual receipts from the sale of an alcoholic product which includes mix for an alcoholic product, or a charge in connection with the furnishing of an alcoholic product pursuant to 32B-6-805(9).

(2) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, service charges, and all other sales. These records shall be reported to the department on an annual basis as part of the application for renewal of the reception center license. Additionally, these records should be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) If any inspection or audit discloses that the sales of alcoholic products exceed 30% of the reception center licensee's total receipts for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's alcohol sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of alcohol do not exceed 30% of the business. Failure of the licensee to provide satisfactory proof of the required alcohol percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(4) Liquor dispensing shall be in accordance with Section

32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

R81-4F-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the reception center as approved by the department.

R81-4F-9. Alcoholic Product Flavoring.

Reception center liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the reception center license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No reception center employee under the age of 21 years may handle alcoholic product flavorings.

R81-4F-10. Table Service.

(1) Alcoholic products may not be sold, offered for sale, or furnished to a patron, and a patron may not consume an alcoholic product at a bar structure. Alcoholic products may be dispensed from a mobile serving area that is moved only by staff of the reception center licensee, is capable of being moved by only one individual, and is no larger than 6 feet long and 30 inches wide. Otherwise, alcoholic products must be dispensed from an area that is separated from an area for the consumption of food by a patron by a solid, translucent or opaque, permanent structural barrier in accordance with 32B-6-805(15).

(2) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(3) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(4) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department.

R81-4F-11. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4F-12. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32B-6-805(3).

(2) Purpose. This rule implements the requirement of 32B-6-805(3) that requires the commission to provide by rule procedures for reception center licensees to report scheduled events to the department to allow random inspections of events by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under 32B-6-801 shall file with the department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each scheduled event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee submitting the information, and the licensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of a reception center licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

R81-4F-13. Agreement For Alcoholic Beverage Service.

(1) "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

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32B-6-801 through 805

R81. Alcoholic Beverage Control, Administration.
R81-5. Club Licenses.
R81-5-1. Licensing.

(1) Club liquor licenses are issued to persons as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32B-5-310.

(2)(a) At the time the commission grants a club license the commission must designate whether the club qualifies to operate as an equity, fraternal, dining, or social club based on criteria in 32B-6-404.

(b) After any club license is granted, a club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32B-6-404.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(e)(i) Pursuant to 32B-6-409, a dining club licensee may convert its dining club license to a different type of retail license for which the dining club licensee qualifies. However, the conversion must occur between July 1, 2011 and June 30, 2013.

(ii) The dining club licensee shall request the conversion in writing supported by evidence to establish that the club qualifies to operate under the new retail license based on the statutory criteria for that type of license.

(iii) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(iv) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new retail license, the commission shall approve the request.

(v) After the conversion, the licensee must then operate under the provisions relevant to the type of retail license to which the club converted. If the dining club is converted to a full-service restaurant, limited-service restaurant, or beer-only restaurant, the bar structure of the dining club is considered a seating grandfathered bar structure for purposes of a full-service restaurant or limited-service restaurant license, or a grandfathered bar structure for purposes of a beer-only restaurant license.

(vi) Such conversions will not be counted against any quota for the type of retail licensee to which the club converted.

(3)(a) A dining club must operate as described in 32B-6-404(3), and must maintain at least 60% of its total club business from the sale of food, not including mix for alcoholic beverages, and service charges. Any dining club that was licensed on or before June 30, 2011, may maintain 50% food sales until July 1, 2012, but must then maintain 60%.

(b) A dining club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than the required percentage for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed the required percentage. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission, or alternatively, to determine why the license should not be immediately reclassified by the commission as a social club. If the commission grants a reclassification to a social club, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be reclassified a dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed the required percentage.

R81-5-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a club license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-405 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as the type of club license requested on the application, evidence of proximity to certain community locations, evidence that the applicant meets the requirements for the type of club license for which the person is applying, evidence that a variety of food is prepared and served in connection with dining accommodations, a bond, a floor plan, public liability and liquor liability insurance, and if an equity or fraternal club a copy of the club's bylaws or house rules and any amendment to those records); and

(b) the department has inspected the club premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-5-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-405(5) may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-5-4. Insurance.

Public liability and dram shop insurance coverage required in Subsections 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-5-5. Advertising.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32B-6-407(13) that equity and fraternal clubs advertise in a manner that preserves the concept that such clubs are private and not open to the general public.

(3) Application of Rule.

(a) Any public advertising by an equity or fraternal club, its employees, agents, or members, or by any person under contract or agreement with the club shall clearly identify the club as being "a club for members". In print media, this club identification information must be no smaller than 10 point bold type.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that runs counter to the concept that such clubs are private and not open to the general public such as:

(i) offering or providing complimentary club memberships to the general public;

(ii) offering or providing full or partial payment of membership fees or dues to members of the general public;

(iii) offering or implying an entitlement to a club membership to members of the general public; or

(iv) offering to host members of the general public into the club.

R81-5-6. Club Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-5-7. Club Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-406(4). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-5-8. Sale and Purchase of Alcoholic Beverages.

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304; and Sections R81-1-9 (Liquor Dispensing Systems) and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-5-9. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the club as approved by the department.

R81-5-10. Alcoholic Product Flavoring.

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

R81-5-11. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer. A copy shall be kept on the club premises and available at all times for examination by patrons of the club.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-5-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-5-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed club, the proprietor may, in his or

her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with regular patrons of the club.

R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32B-6-407 that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to 32B-6-406(5), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, fraternal, or dining club. A minor may not be on the premises of a social club except to the extent allowed under 32B-6-406.1, and may not be admitted into, use, or be on the premises of any lounge or bar area of a social club.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in 32B-1-102(7);

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of an equity, fraternal, or dining club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

R81-5-18. Age Verification - Dining and Social Clubs.

(1) Authority. 32B-1-402, -405, and -407.

(2) Purpose.

(a) 32B-1-407 requires dining and social club licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Section 32A-5-107;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32B-1-405.

KEY: alcoholic beverages

April 30, 2013	**32-1-607**
Notice of Continuation May 10, 2011	**32B-2-202**
	32B-5

32B-6-401 through 409

R81. Alcoholic Beverage Control, Administration.
R81-9. Liquor Warehousing Licenses.
R81-9-1. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a liquor warehouse license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-12-202, -204, and -206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a liquor warehousing license, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the warehouse premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-9-2. Transportation.

Dual licensees, those who have both a liquor warehousing license and a beer wholesaling license, pursuant to Chapters 12 and 13 of the Act, may transport liquor, wine, and heavy beer to the department and to federal military installations within Utah.

R81-9-3. Records.

Each licensee shall keep available and open for audit at all times during regular business hours, complete and accurate records of shipments to or from their warehouse facility. Records shall be kept for a minimum of three years.

R81-9-4. Audits.

The liquor warehouse licensee shall allow the department, through its authorized representatives, to audit all records of their liquor warehouse license at times the department considers advisable.

R81-9-5. Inspection.

A liquor warehouse licensee shall permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the liquor warehouse facility to inspect the premises.

KEY: alcoholic beverages

April 30, 2013	**32A-1-607**
Notice of Continuation May 10, 2011	**32B-2-202**
	32B-9

R81. Alcoholic Beverage Control, Administration.
R81-10A. Recreational Amenity On-Premise Beer Retailer Licenses.
R81-10A-1. Definitions.

(1) "Recreational Amenity" is one or more of the following or an activity substantially similar to one of the following:

(a) a billiard parlor;
(b) a pool parlor;
(c) a bowling facility;
(d) a golf course;
(e) miniature golf;
(f) a golf driving range;
(g) a tennis club;
(h) a sports facility that hosts professional sporting events and has a seating capacity equal to or greater than 6,500;
(i) a concert venue that has a seating capacity equal to or greater than 6,500;
(j) one of the following if owned by a government agency:
(i) a convention center;
(ii) a fair facility;
(iii) an equestrian park;
(iv) a theater; or
(v) a concert venue;
(k) an amusement park:
(i) with one or more permanent amusement rides; and
(ii) located on at least 50 acres;
(l) a ski resort;
(m) a venue for live entertainment if the venue:
(i) is not regularly open for more than five hours on any day;
(ii) is operated so that food is available whenever beer is sold, offered for sale, or furnished at the venue; and
(iii) is operated so that no more than 15% of its total annual receipts are from the sale of beer; or
(n) concessions operated within the boundary of a park administered by the:
(i) Division of Parks and Recreation; or
(ii) National Parks Service.

R81-10A-2. Licensing.

(1) Recreational amenity on-premise beer retailer licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

(2) A recreational amenity on-premise beer retailer licensee that wishes to operate the same licensed premises under the operational restrictions of a restaurant liquor license or a limited restaurant license during certain designated periods of the day or night, must apply for and be issued a separate restaurant liquor license or a limited restaurant license subject to the following:

(a) The same recreational amenity on-premise beer retailer licensee must separately apply for a state restaurant liquor license pursuant to the requirements of Sections 32B-5-202, -204 and 32B-6-204, or a limited restaurant license pursuant to the requirements of Sections 32B-5-201, -204 and 32B-6-304.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Recreational amenity on-premise beer retailer licensees holding a separate restaurant liquor license must operate in accordance with 32B-5-301 and 32B-6-205 and R81-4A during the hours the restaurant liquor license is active.

(d) Recreational amenity on-premise beer retailer licensees holding a separate limited restaurant license must operate in accordance with 32B-5-301 and 32B-6-305 and R81-4C during the hours the limited restaurant license is active.

(e) Liquor storage areas on the restaurant or limited restaurant premises shall be deemed to remain on the floor plan of the restaurant or limited restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-10A-3. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a recreational amenity on-premise beer retailer license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-705 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as a recreational amenity on-premise beer retailer license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the retailer sells more than $5000 of beer annually); and

(b) the department has inspected the recreational amenity on-premise beer retailer premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-10A-4. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the recreational amenity on-premise beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10A-5. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j)must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10A-6. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

KEY: alcoholic beverages
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32B-5
32B-6-701 through 708

R81. Alcoholic Beverage Control, Administration.
R81-10C. Beer-Only Restaurant Licenses.
R81-10C-1. Licensing.

(1) Beer-only restaurant licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

R81-10C-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer only restaurant license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-904 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation of a beer-only restaurant license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability and liquor liability insurance); and

(b) the department has inspected the beer-only restaurant premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-10C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-904(4) may be withdrawn during the time the license is in effect. If the beer-only restaurant licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j)must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10C-5. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-10C-6. Sale and Purchase of Beer.

(1) Beer must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32B-6-905(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-905(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(3) Beer dispensing shall be in accordance with Section 32B-5-304(5) and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-10C-7. Alcoholic Product Flavoring.

Beer Only Restaurant licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-10C-8. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) Beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-10C-9. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-10C-10. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-902 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in an establishment licensed as an on-premise beer retailer and operational as of August 1, 2011, may be "grandfathered" to allow beer to continue to be stored or dispensed at the bar

structure, and in some instances to be served to an adult patron seated at the bar structure;

(b) This rule is also pursuant to 32B-6-902 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "remodels the grandfathered bar structure" for purposes of 32B-6-902(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages
April 30, 2013

32-1-607
32B-2-202
32B-5
32B-6-901 through 905

R81. Alcoholic Beverage Control, Administration.
R81-10D. Tavern Beer Licenses.
R81-10D-1. Licensing.

(1) Tavern beer licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

R81-10D-2. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a tavern license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-5-201, -204, and 32B-6-703 and -705 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as a tavern beer license, evidence of proximity to certain community locations, a bond, a floor plan, and public liability insurance and liquor liability insurance if the tavern sells more than $5000 of beer annually); and

(b) the department has inspected the tavern premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-10D-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the tavern beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10D-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j)must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10D-5. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-10D-6. Age Verification - Taverns.

(1) Authority. 32B-1-402, -405, and -407.

(2) Purpose.

(a) 32B-1-407 requires tavern licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the tavern licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title 32B.

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

(C) the expiration date of the proof of age identification document;

(D) the date the proof of age identification document was presented;

(E) the individual's name; and

(F) the individual's date of birth.

(c) Any data collected either electronically or otherwise:

(i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;

(ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Section 32B-5-

301;

(iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;

(iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and

(v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.

(d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under 32B-1-405.

KEY: alcoholic beverages
April 30, 2013

32-1-607
32B-2-202
32B-5
32B-6-701 through 708

R81. Alcoholic Beverage Control, Administration.
R81-11. Beer Wholesaler Licenses.
R81-11-1. Application.

(1) No license application will be included on the agenda of a monthly commission meeting for consideration for issuance of a beer wholesaler license until:

(a) The applicant has first met all requirements of Sections 32B-1-304 (qualifications to hold the license), and 32B-13-202, -204 and -206 (submission of a completed application, payment of application and licensing fees, written consent of local authority, copy of current local business license(s) necessary for operation as a beer wholesaler license, a bond, a statement of the brands of beer the applicant is authorized to sell and distribute, statement of the territories in which the applicant is authorized to sell and distribute beer under an agreement required by 32B-11-201 or 32B-11-503, and public liability insurance); and

(b) the department has inspected the beer wholesaler premise.

(2)(a) All application requirements of Subsection (1)(a) must be filed with the department no later than the 10th day of the month in order for the application to be included on that month's commission meeting agenda unless the 10th day of the month is a Saturday, Sunday, or state or federal holiday, in which case all application requirements of Subsection (1)(a) must be filed on the next business day after the 10th day of the month.

(b) An incomplete application will be returned to the applicant.

(c) A completed application filed after the deadline in Subsection (2)(a) will not be considered by the commission that month, but will be included on the agenda of the commission meeting the following month.

R81-11-2. Transfer of License.

The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules. However, no assignment and transfer may result in both a change of license and change of location.

R81-11-3. Conditions of Transfer.

(1) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee/transferee shall apply to the commission for approval of the assignment and transfer, and shall furnish any information the commission may require.

(2) The assignment and transfer shall not be of any force and effect until the commission has approved it.

(3) The assignee/transferee shall not take possession of the premises, or exercise any of the rights of a license until the commission has approved the assignment and transfer.

(4) No assignment and transfer shall be made within thirty days after the holder of a wholesaler license has been granted a change of location.

(5) No change of location shall be granted within ninety days after assignment and transfer of a wholesaler license.

(6) In approving any assignment and transfer of a wholesaler license, the commission may impose special conditions relating to any future connection of the former licensee or any of his employees with the business of the assignee or transferee.

(a) Prior to the imposition of any special conditions, the commission shall hold a hearing to allow the former licensee or any of his employees to attend and provide information to the commission.

(b) The commission shall provide written notice to all parties involved at least ten days prior to the hearing.

(7) No wholesaler license may be assigned to any person who does not qualify for the license under Sections 32B-1-304 and 32B-13-202 and -204.

R81-11-4. Change of Trade Name.

A change of trade name may coincide with the transfer of the wholesaler license, with the commission's approval. Any licensed wholesaler may adopt a trade name or change the trade name by applying to the commission on forms provided by the department and upon receiving the commission's approval.

R81-11-5. Change in Partners.

If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R81-11-3. However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the commission directs otherwise.

KEY: alcoholic beverages
April 30, 2013 **32A-1-607**
Notice of Continuation May 10, 2011 **32B-2-202**
32B-13

R137. Career Service Review Office, Administration.
R137-2. Government Records Access and Management Act.
R137-2-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Career Service Review Office.

R137-2-2. Authority.

The authority for this rule is found in Sections 63G-2-204 of the Government Records Access and Management Act (GRAMA) and 63A-12-104 of the Utah Administrative Services Code.

R137-2-3. Definitions.

A. "Administrator" means the Administrator of the Career Service Review Office as set forth at Sections 67-19a-101(1) and 67-19a-204.

B. "CSRO" means the Career Service Review Office.

C. "GRAMA" means the Government Records Access and Management Act as enacted by the 1992 Utah Legislature, Sections 63G-2-101 through 901, Utah Code Annotated.

D. "Records Officer" means the individual responsible to fulfill Section 63G-2-103(25) of the GRAMA.

R137-2-4. Records Officer.

A. The records officer for the CSRO shall be the administrative assistant.

B. The records officer shall review and respond to requests for access to CSRO records, according to Section 63A-12-103.

R137-2-5. Requests for Access.

A. Requests for access to CSRO records shall be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the records being requested. A records access form may be obtained from the CSRO upon request, but this form is not required in order to petition for access to CSRO records.

B. Requests should be directed to the Records Officer, Career Service Review Office, 1120 State Office Building, Salt Lake City, UT 84114.

C. The CSRO is not required to respond to requests submitted to the wrong person, agency or location within the time limits set by the GRAMA.

R137-2-6. Fees.

A. Reasonable fees may be charged for copies of records provided upon request. Fees for photocopying may be charged as authorized by Section 63G-2-203. A fee schedule may be obtained from the CSRO by telephoning 801-538-3048 or by making a personal inquiry at the office during regular business hours.

B. The CSRO may require payment of past fees and future fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R137-2-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for application of a waiver of a fee may be made to the CSRO records officer.

R137-2-8. Requests to Amend a Record.

A. An individual may contest the accuracy or completeness of a document pertaining to the requester, pursuant to Section 63G-2-603. Requests to amend a record shall be processed as informal adjudications under the Utah Administrative Procedures Act. All requests to amend a record must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the record to be amended.

B. Adjudicative proceedings concerning requests to amend a record or records under the GRAMA shall be informal adjudicative proceedings and shall comply with Section 63G-2-401 et seq.

R137-2-9. Time Periods under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R137-2-10. Appeal of Agency Decision.

A. If a requester is dissatisfied with the CSRO's initial decision, the requester may appeal that decision to the CSRO administrator under the procedures of Section 63G-2-401 et seq.

B. A person may contest the accuracy or completeness of a document pertaining to that individual according to Section 63G-2-603. The initial request must be made to the CSRO administrative assistant. An appeal from the CSRO administrative assistant's decision may be made to the CSRO administrator under the procedures of Section 63G-2-603.

C. Appeals of requests to amend a record shall be informal adjudications under the Utah Administrative Procedures Act.

R137-2-11. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by GRAMA under Section 63G-2-202(8). Requests for access to such records for research purposes may be made directly to the CSRO records officer.

KEY: public records, records access
July 1, 2010 63G-2-101 through 63G-2-901
Notice of Continuation April 1, 2013 63A-12-103 through 63A-12-104
67-19a-203(8)

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(p) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(p) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(17), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(39), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102(21) and 58-55-102(32), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

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 55.

R156-55a-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.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(21) and pursuant to Subsection 58-55-102(21)(b) is clarified as follows:

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than $50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a

temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(21) or 58-55-102(32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic cell panels and related components. Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an S200 General Electrical Contractor or S201 Residential Electrical Contractor. This classification is not required to install stand alone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or parking lighting.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work

includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementatious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementatious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of

complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope

of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subsclassifications:

TABLE I

Primary Classification	Included subclassifications
S200	S201, S202
S210	S211, S212, S213, S214, S215, S216, S217
S220	S221, S222
S230	S231
S260	S261, S262, S263
S270	S272, S273
S290	S291, S292, S293, S294
S320	S321, S322, S323
S350	S351, S325, S353, S354
S420	S421
S440	S441
S490	S491

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables including phone and cable television;

(e) installation of low voltage electrical as described in R156-55b-102(1);

(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation; and

(p) artificial turf installation.

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality; and

(c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

(a) the Utah Contractor Business - Law Examination; and

(b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

E100 - General Engineering Contractor

B100 - General Building Contractor

B200 - Modular Unit Installation Contractor

R100 - Residential and Small Commercial Contractor

R101 - Residential and Small Commercial Non Structural Remodeling and Repair Contractor

R200 - Factory Built Housing Contractor

I101 - General Engineering Trades Instruction Facility

I102 - General Building Trades Instruction Facility

I105 - Mechanical Trades Instruction Facility

S212 - Irrigation Sprinkling Contractor

S213 - Industrial Piping Contractor

S215 - Solar Thermal Systems Contractor

S216 - Residential Sewer Connection and Septic Tank Contractor

S220 - Carpentry Contractor

S222 - Overhead and Garage Door Contractor

S230 - Siding Contractor

S240 - Glass and Glazing Contractor

S250 - Insulation Contractor

S260 - General Concrete Contractor

S270 - General Drywall and Plastering Contractor

S280 - General Roofing Contractor

S290 - General Masonry Contractor

S293 - Marble, Tile and Ceramic Contractor

S300 - General Painting Contractor

S310 - Excavation and Grading Contractor

S320 - Steel Erection Contractor

S321 - Steel Reinforcing Contractor

S330 - Landscaping Contractor

S340 - Sheet Metal Contractor

S350 - HVAC Contractor

S351 - Refrigerated Air Conditioning Contractor

S353 - Warm Air Heating Contractor

S360 - Refrigeration Contractor

S370 - Fire Suppression Systems Contractor

S380 - Swimming Pool and Spa Contractor

S390 - Sewer and Waste Water Pipeline Contractor

S410 - Pipeline and Conduit Contractor

S440 - Sign Installation Contractor

S450 - Mechanical Insulation Contractor

S490 - Wood Flooring Contractor

S600 - General Stucco Contractor

(3) The passing score for each examination is 70%.

(4) Qualifications to sit for examination.

(a) An applicant applying to take any examination specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or

(b) given by another state if the Division has determined the examination to be substantially equivalent.

(6) An applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure up to three failures; and

(b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the

minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) Unless otherwise provided in this rule, all experience shall be lawfully performed under the general supervision of a contractor licensed in the classification applied for or a substantially equivalent classification, and shall be subject to the following:

(i) If the experience was completed in Utah, it shall be:

(A) completed while a W-2 employee of a licensed contractor; or

(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.

(ii) If the experience was completed outside of the state of Utah, it shall be:

(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and

(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.

(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required.

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in Subsection (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), the qualifier for an applicant for an R100, B100 or E100 license shall demonstrate the following experience:

(i) a minimum of four years experience within the past 10 years; or

(ii) if the applicant's qualifier has previously been approved as a qualifier in the state of Utah, a passing score on the trade examination and the laws and rules examination taken within one year of the date of application to requalify the qualifier's experience.

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(d) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), the qualifier for an applicant for an S220, S280, S290, S320, S350, S360 and S370 license shall demonstrate the following experience:

(a) a minimum of four years experience within the past 10 years; or

(b) if the applicant's qualifier has previously been approved as a qualifier in the state of Utah, a passing score on the trade examination and the laws and rules examination taken within one year of the date of application to requalify the qualifier's experience.

(4) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

Except as set forth in Subsections (6) and (7), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall demonstrate the following experience:

(a) a minimum of two years experience within the past 10 years; or

(b) if the applicant's qualifier has previously been approved as a qualifier in the state of Utah, a passing score on the trade examination and the laws and rules examination taken within one year of the date of application to requalify the qualifier's experience.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsections (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

(7) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsections (1) and (5), an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as a master electrician or a residential master electrician.

(2) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as a master plumber or a residential master plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least $100,000 for each incident and $300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-303a. 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 55 is established by rule in Section R156-1-308a(1).

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term ending November 30, 2009, the continuing education must be completed between July 1, 2007 and November 30, 2009. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the construction trades.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7 and 58-55-303(6), which is completed by an employee or owner of a contractor, shall satisfy the continuing education requirement for contractors as established in

Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 10 hours of work per week;.

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 10 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2) Construction Trades Instruction Facility Qualifier. In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the Division.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than $1,000 but less than $3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least $100,000 for each incident and $300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306(2), 58-55-306(4)(b), and 58-55-102(19), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee and any owners; and

(h) any history of prior entities owned or operated by the

applicant, the licensee, or any owner that have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program; and

(c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination

requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the Division, to provide proof of insurance coverage within 30 days.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE II

FINE SCHEDULE

Violation	FIRST OFFENSE All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A
58-55-501(21)	$ 500.00	$ 500.00
58-55-501(24)	$ 500.00	N/A
58-55-501(25)	$ 500.00	N/A
58-55-504(2)	$ 500.00	N/A
	SECOND OFFENSE	
58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-501(24)	$1,000.00	N/A
58-55-501(25)	$1,000.00	N/A
58-55-504(2)	$1,000.00	N/A
	THIRD OFFENSE	

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(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 presented.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators;

(2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program; or

(3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

(1) Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(4)(c) and except as provided in Subsection R156-55a-602(4), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount of $50,000 for the E100 or B100 classification of licensure, $25,000 for the R100 classification of licensure, or $15,000 for other classifications or such higher amount as may be determined by the Division and the Commission as provided for in Subsection R156-55a-602(3). An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility.

(3) The amount of the bond specified under Subsection R156-55a-602(1) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(4) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in R156-55a-602(1) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing
April 22, 2013 **58-1-106(1)(a)**
Notice of Continuation October 4, 2011 **58-1-202(1)(a)**
58-55-101
58-55-308(1)(a)
58-55-102(39)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.
R156-67-101. Title.

This rule shall be known as the "Utah Medical Practice Act Rule".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. 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 67.

R156-67-104. 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.

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308a.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(3) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603; and

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-67-503. Administrative Penalties.

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred

by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: $500-$5,000

Second Offense: $1,500-10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or

profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ii) 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 in violation of Subsection R156-1-501(1):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(jj) 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 in violation of Subsection R156-1-501(2):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(kk) 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 in violation of Subsection R156-1-501(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ll) 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 in violation of Subsection R156-1-501(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(mm) 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 in violation of Subsection R156-1-501(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):
First Offense: $5000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe,

sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(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.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the "AMA Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: physicians, licensing

April 8, 2013	**58-67-101**
Notice of Continuation March 14, 2011	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-101. Title.

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.

(3) "ACCME" means Accreditation Council for Continuing Medical Education.

(4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(5) "AMA" means the American Medical Association.

(6) "AOA" means American Osteopathic Association.

(7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(8) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(10) "FSMB" means the Federation of State Medical Boards.

(11) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(12) "LMCC" means the Licentiate of the Medical Council of Canada.

(13) "NBME" means the National Board of Medical Examiners.

(14) "NBOME" means the National Board of Osteopathic Medical Examiners.

(15) "NPDB" means the National Practitioner Data Bank.

(16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.

(17) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. 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 68.

R156-68-104. 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.

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form; and

(3) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III;

(b) the NBOME parts I, II and the NBOME COMPLEX Level III;

(c) the NBOME part I and the NBOME COMLEX Level II and III;

(d) the NBOME COMLEX Level I, II and III;

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(h) the LMCC examination, Parts 1 and 2;

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

(4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.

R156-68-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308a.

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

R156-68-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-68-304(1) shall consist of 40 hours in each preceding two year licensure cycle.

(a) A minimum of 34 hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Participation in an AOA or ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

(2) Continuing education under this section shall:

(a) be relevant to the licensee's professional practice;

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(3) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603; and

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-68-503. Administrative Penalties.

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and

ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: $500-$5,000

Second Offense: $1,500-10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(z) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the

second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ee) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ff) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(gg) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(hh) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ii) 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 in violation of Subsection R156-1-501(1):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(jj) 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 in violation of Subsection R156-1-501(2):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(kk) 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 in violation of Subsection R156-1-501(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ll) 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 in violation of Subsection R156-1-501(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(mm) 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 in violation of Subsection R156-1-501(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(nn) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(oo) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: $5000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(pp) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(qq) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(rr) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ss) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(tt) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(uu) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(vv) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ww) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(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.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the AMA "Code of Medical Ethics", 2008-2009 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: osteopaths, licensing, osteopathic physician

April 8, 2013 58-1-106(1)(a)

Notice of Continuation February 7, 2013 58-1-202(1)(a)

58-68-101

R162. Commerce, Real Estate.
R162-57a. Timeshare and Camp Resort Rules.
R162-57a-1. Title and Authority.

(1) This section shall be known as the "Timeshare and Camp Resort Rules."

(2) The authority to make rules for the timeshare and camp resort industries is granted to the division director by Section 57-19-3.

R162-57a-2. Definitions.

(1) "Affiliation" means an employment or independent contractor relationship between a salesperson and a developer.

(2) "Amendment" means a change to an original registration as to information submitted pursuant to Subsection R162-57a-5(3)(j)-(y).

(3) "Annual report" means information submitted to the division in order to renew a project registration, including the following:

(a) the number of intervals, memberships, or other interests sold since the registration was issued or last renewed;

(b) the total number of intervals, memberships, or other interests sold since the date of initial registration;

(c) the number of intervals, memberships, or other interests reacquired by foreclosure or similar proceeding that had previously been reported as sold;

(d) the total number of registered but unsold intervals, memberships, or other interests as of the date of the annual report; and

(e) the total number of intervals, memberships, or other interests that have been registered.

(4) The acronym "ATR" means ARELLO Timeshare Registry, which is the online database system through which developers may register projects with the division.

(5) "Business day" means a day other than a:

(a) Saturday;

(b) Sunday; or

(c) state or federal holiday.

(6) "Common promotional plan" means a plan whereby multiple timeshare or camp resort interests, whether in the same location or not, are advertised and/or offered for disposition without the ownership of the interests being differentiated or distinguished.

(7) "Common facilities" means areas and amenities within a project to which all purchasers share an equal right of access and use.

(8) "Consolidation" means the registration of additional interests in a project for which the director has previously issued a registration.

(9) "Day" means calendar day unless specified as "business day."

(10) "Direct sales presentation" means a meeting in which a salesperson provides information about project(s) or interest(s) to one or more prospective purchasers.

(11) "Entity" means:

(a) a corporation;

(b) a limited liability company;

(c) a partnership;

(d) a company;

(e) an association;

(f) a joint venture;

(g) a business trust;

(h) a trust; or

(i) another organization.

(12) "Expired registration" means a project or salesperson registration that may not be used to advertise, offer, or sell interests because the holder of the registration failed to renew it by or before the expiration date.

(13) "Notice of defect" means a written communication from the director informing an applicant that the applicant must submit additional information to clarify, complete, or correct an application for:

(a) registration;

(b) consolidation; or

(c) renewal.

(14) "Person" means an individual or an entity.

(15) "Personal information" means data that may be used to identify or contact a prospective purchaser, including:

(a) name;

(b) home or business address;

(c) home, business, or cell telephone number; and

(d) e-mail address.

(16) "Prospective purchaser" means a person who:

(a) attends a sales presentation;

(b) communicates with a developer or salesperson in order to obtain information about a project;

(c) provides personal information to a developer or salesperson; or

(d) is solicited by a developer or salesperson through any type of advertisement.

(17) "Property report" means a document that includes:

(a) disclosures required pursuant to Section 57-19-11;

(b) a cover sheet as generated and provided by the division; and

(c) a receipt generated by the division.

(18) "Public offering statement" has the same meaning as "property report."

(19) "Registration" means:

(a) as to a project, division approval of the project as being suitable for the advertisement, offering, and sale of interests; and

(b) as to a salesperson, division approval for the salesperson to engage in the advertisement, offering, and sale of interests.

(20) "Reinstatement period" means a 30-day period following the expiration of registration during which a person may reinstate an expired registration by submitting all required renewal materials and paying applicable fees.

(21) The acronym "RELMS" means Real Estate License Management System, which is the online forum through which registered salespersons may submit forms and information to the division.

(22) "Renewal" means extending a registration for an additional period on or before the date the registration expires.

(23) "Supplement" means a change in the information submitted pursuant to Subsection R162-57a-5(3)(a)-(i).

(24) "Temporary permit" means authorization from the division for a developer to engage in the advertisement, offering, and sale of interests for a period not to exceed 30 days.

R162-57a-5. Project Registration.

(1) Registration required.

(a) A person may not engage in the advertisement, offering, or sale of interests unless:

(i) the project is properly registered with the division pursuant to Section 57-19 et seq. and these rules; and

(ii) each individual who will engage in offering or selling interests is registered as salesperson pursuant to Section 57-19 et seq. and these rules.

(b)(i) A project is not considered registered until the developer seeking registration obtains from the division:

(A) a complete property report, approved by the division; and

(B) an order of registration.

(ii) A salesperson is not considered registered until the individual receives a registration from the division.

(c) Absent the issuance of a property report or registration, acceptance by the division of a registration fee does not authorize a person to engage in the advertisement, offering, or

sale of interests.

(2) Registration procedure. A developer shall submit all information required under Subsection (3) to the division:

(a) through the ATR; or

(b) if the developer obtains advance permission from the division, directly to the division.

(3) Required Information. A developer shall submit to the division:

(a) property report pursuant to Section 57-19-11 and Subsection R162-57a-11;

(b) as to each officer, partner, director, and owner of the developer:

(i) as applicable, documentation of any disciplinary or adverse licensing action taken against a professional license held by the individual in any jurisdiction;

(ii)(A) a statement of the type and extent of any financial interest the individual has in the project; and

(B) an explanation of any options the individual may exercise to acquire additional financial interest in the project;

(iii) as applicable, court records from any criminal proceeding taken against the individual in any jurisdiction, regardless of whether the proceeding was resolved by:

(A) conviction;

(B) plea in abeyance;

(C) diversion agreement;

(D) sentence of confinement; or

(E) dismissal; and

(iv) as applicable, documentation of any bankruptcy filing by:

(A) the individual; or

(B) an entity in which the individual has held:

(I) an ownership interest; or

(II) a position as a manager, officer, or director;

(c) evidence that the developer is registered in good standing with the Utah Division of Corporations;

(d) corporate resolution naming a resident agent to act on behalf of the developer;

(e) copy of the current articles of incorporation or other instrument creating the developer entity;

(f) copy of the current bylaws of the developer entity;

(g)(i) states or jurisdictions in which the developer has filed an application for registration or similar document;

(ii) copy of the property report or other disclosure document required to be given to purchasers by any jurisdiction in which the project is registered or the developer is otherwise authorized to advertise, offer, or sell interests;

(iii) full documentation of any adverse order, judgment, or decree entered in connection with the project by any regulatory authority in any jurisdiction;

(h) name of any salesperson who will offer or sell interests in the project;

(i) name of the individual who will be responsible for directly supervising the salesperson(s) offering or selling interests in the project;

(j) legal description of the property upon which the project is located;

(k) statement, generated or updated within the 30-day period preceding the date of application, of the condition of the title to the property upon which the project is located, including encumbrances;

(l)(i) copy of any instrument by which the developer acquired interest in the project; or

(ii) if the developer does not hold fee title to the property, evidence that the developer is legally entitled to use the property, as follows:

(A) if the property is situated within Utah:

(I) a title opinion from a title insurer licensed in Utah; or

(II) an opinion letter from an independent, third party attorney actively licensed in Utah;

(B) if the property is situated outside of Utah:

(I) a title opinion from a title insurer licensed where the property is situated; or

(II) an opinion letter from an independent, third party attorney who is actively licensed to practice in the jurisdiction where the property is situated; and

(C) if the property is located in a jurisdiction such as a foreign country where property title opinions are issued by parties other than title companies and attorneys, other evidence of title as specified and approved by the director;

(m) copy of any instrument creating a lien, easement, restriction, or other encumbrance affecting the project, including any recording data, but redacted as to the consideration paid upon acquisition of the project;

(n) statement of the zoning and other governmental regulations affecting the use of the project;

(o) existing and proposed taxes or special assessments that affect the project;

(p)(i) copies of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the project; and

(ii) copies of the contracts and other agreements that a purchaser will be required to agree to or sign;

(q) topograhic map and accompanying statement describing the general topography and physical characteristics of the project, including:

(i) terrain;

(ii) soil conditions;

(iii) flood control; and

(iv) climate;

(r) copy of any:

(i) recorded declaration of condominium;

(ii) recorded covenants, conditions, and restrictions (CCRs); and

(iii) instrument governing the project and incorporating all covenants of the grantor or lessor;

(s) copy of any plan to create an association for project owners;

(t) narrative description of the promotional plan for the disposition of the project;

(u) statement disclosing any inducement that will be offered in connection with the advertisement, offering, or sale of interests in the project;

(v) map showing:

(i) the location of the interests and other improvements on the property;

(ii) the relation of the project to existing streets, roads, and other off-site improvements; and

(iii) the relation of the project to factors that might negatively impact the quiet enjoyment of an interest;

(w)(i) statement of improvements and amenities to be installed that have not been completed;

(ii) schedule for completion;

(iii) evidence that the developer has obtained all necessary permits; and

(iv) if the city or county in which the property is located does not require means of assurance that all improvements and amenities referred to in the application will be completed, copies of:

(A) escrow or trust agreements;

(B) performance bonds; or

(C) other documentation to evidence that adequate financing is available and arrangements have been made for the installation of all streets, sewers, electricity, gas, water, telephone, drainage, and other improvements;

(x)(i) provisions for maintenance to both existing and planned improvements and amenities; and

(ii) estimated cost of such maintenance to purchasers;

(y) description of any corrective work that must be performed on or relating to the project before particular interests

are suitable for use;

(z) completed application as required by the division; and

(aa) a nonrefundable registration fee.

(4) The director may waive production of an item required pursuant to Subsection (3) if the developer shows that the item is not necessary to fulfill the purposes of Section 56-19 et seq.

(5) Consolidation.

(a) An application for consolidation shall be prepared and submitted in the same format as an application for initial registration.

(b) Where there is no change in the information submitted by the developer for the initial registration, the documents required by Subsection (3) may be incorporated by reference to documents on file with the division.

(c) An incomplete application for consolidation shall be treated as provided in Subsection (6).

(d) New inventory added to a project through consolidation is subject to inspection by the division.

(6) Notice of defect.

(a) If an application is incomplete, or otherwise fails to comply with Section 57-19 et seq. or these rules, the director shall send a notice of defect to the developer or the developer's legal representative specifying:

(i) what additional information is required to cure the defect; and

(ii) the deadline by which the division must receive the additional information.

(b) After receipt of a notice of defect, the developer may not offer units to the public:

(i) until the defect is cured and a registration obtained; or

(ii) without obtaining a temporary permit pursuant to Section 57-19-6(3) and Subsection (8).

(c)(i) If the additional information is not received by the division by the deadline specified in the notice of defect, the director may deny the registration.

(ii) An order of denial may be appealed pursuant to Section 57-19-17.

(7) Standards for approval.

(a) The director may not approve an application for registration of a project unless:

(i) the documents submitted pursuant to Subsection (3) meet the requirements of Section 57-19 et seq. and these rules; and

(ii) the developer demonstrates the ability to convey or cause to be conveyed the interests offered for disposition.

(b) The division may not issue a project registration to a developer that has an officer, partner, director, or owner who has:

(i) been prosecuted for a felony that resulted in a:

(A) conviction within the five-year period preceding the date of application;

(B) plea agreement within the five-year period preceding the date of application; or

(C) jail or prison release date falling within the five-year period preceding the date of application; or

(ii) been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:

(A) conviction within the three-year period preceding the date of application; or

(B) jail or prison release date falling within the three-year period preceding the date of application.

(c) If the director determines that a registration application and supporting documentation meet the criteria for registration, the division shall issue:

(i) an order of registration designating the form of the property report that the developer is required to provide to a prospective purchaser pursuant to Section 57-19-11;

(ii) a property report cover sheet, which the developer shall attach to the property report as its first page; and

(iii) a receipt for property report, which the developer shall attach to the property report as its last page.

(8) Temporary permit.

(a) To apply for a temporary permit, a person shall:

(i) make application by submitting a written request to the director;

(ii) comply with Section 57-19-6(3); and

(iii) pay all fees required for registration.

(b) A temporary permit issued by the director is valid for a period of 30 days from the date of issue.

(c) A temporary permit may not be renewed.

(9) Notification of changes.

(a) A developer whose project is registered under Section 57-19 et seq. shall report to the division within 10 business days any change in:

(i) the developer's contact information;

(ii) the disclosures required under Section 57-19-11;

(iii) the information provided under this Subsection (3), including changes in salespersons employed or contracted to advertise, offer, or sell interests in the project;

(iv)(A) the bankruptcy of an entity controlled or owned by the developer that engages in the advertisement, offering, or sale of interests; and

(B) if the developer is an individual, the filing of a personal bankruptcy;

(v) the suspension, revocation, surrender, cancellation, or denial or a professional license or professional registration issued to the developer, whether the license or registration is issued by this state or another jurisdiction;

(vi) the entry of a cease and desist order, a temporary or permanent injunction, or a regulatory action:

(A) against the developer by a court or a government agency; and

(B) based on:

(I) conduct or a practice involving the advertisement, offering, or sale of interests; or

(II) conduct involving fraud, misrepresentation, or deceit; and

(vii) a finding of fraud, misrepresentation, or deceit entered against the developer in a judicial or administrative proceeding instituted by a purchaser and arising out of or relating to:

(A) the advertising or sale of an interest;

(B) disclosures required under Section 57-19-11; or

(C) rescission rights.

(b) If a deadline for notification falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(10) Amendment and supplement to initial registration.

(a) To submit an amendment to a registration, a developer shall:

(i) complete an amendment filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(b) To submit a supplement to a registration, a developer shall:

(i) complete a courtesy filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(c) Pursuant to Section 57-19-8(4), the certification of a class in a class-action lawsuit against a developer on the basis of the developer's advertising, selling, or managing a project or interest requires the filing of an amendment.

R162-57a-8. Restrictions on Proposed Advertising.

(1) Advertising that promotes gifts and other awards in connection with attending a sales presentation shall:

(a) disclose any conditions precedent to the receipt of the gift or other award; and

(b) if receipt of a specific advertised gift or other award is not guaranteed by virtue of attendance at the sales presentation, state the odds of any attendee's chance of receiving the gift or other award.

(2) A substitute gift, inducement, or award:

(a) shall be equal in value or use to the gift, inducement, or award that was originally promised; and

(b) may not burden the recipient with additional travel expense in order to receive the value of the gift, inducement, or award.

R162-57a-9. Renewal and Reinstatement of Project Registration.

(1) Project registration renewal. To renew a registration of a project, a person shall submit to the division, no later than the expiration date set forth on the order of registration:

(a) an annual report;

(b)(i) an updated property report, with changes underlined in red; or

(ii) a statement that no changes have occurred in the property report that is on record with the division;

(c) a description of any change in the information provided in the application for registration;

(d) documentation of any judicial proceeding or regulatory investigation instituted by complaint of a purchaser against the developer and arising out of or relating to:

(i) the advertising or sale of an interest;

(ii) disclosures required under Section 57-19-11;

(iii) rescission rights;

(iv) fraud; or

(v) misrepresentation of interests represented by the registration; and

(e) a nonrefundable renewal fee.

(2) Reinstatement.

(a) To reinstate an expired project registration, a person shall submit to the division, no later than 30 calendar days following the expiration of the registration:

(i) all materials required for a timely renewal; and

(ii) a nonrefundable late fee.

(b) A registration that is expired more than 30 days may not be renewed or reinstated. To obtain a registration, a person shall apply as a new applicant.

R162-57a-11. Disclosure Required.

(1) The disclosures required by Section 57-19-11 and submitted to the division as part of the application for project registration shall be:

(a)(i) reproduced on good quality white paper 8-1/2 by 11 inches in size;

(ii) typed in a font no smaller than 10-point type, except that financial statements or other statistical or tabular matter may be set in type as small as 8-point type; and

(iii) organized into reasonably short paragraphs or sections with appropriate captions or headings to identify each paragraph or section; or

(b) if acceptable to the director, approved by another state.

(2)(a) Upon approving the developer's disclosures, the division shall supply to the developer:

(i) a cover sheet, which the developer shall use as the first page of the property report; and

(ii) a receipt for property report, which the developer shall use as the last page of property report.

(b)(i) The developer shall provide a copy of the complete property report, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser prior to obtaining the prospective purchaser's signature on a contract for purchase of an interest.

(ii) The developer shall, in connection with an offer to sell an interest, provide a notice of the purchaser's right to cancel described in Section 57-19-12, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser:

(A) at the beginning of a direct sales presentation; or

(B) if the prospective purchaser does not attend a direct sales presentation, at the same time the developer obtains the prospective purchaser's personal information.

R162-57a-13. Unprofessional Conduct.

(1) Developer.

(a) Affirmative duties. A developer or an individual designated by the developer shall:

(i) actively supervise project salesperson(s) to ensure compliance with Section 57-19 et seq. and these rules;

(ii) provide the complete property report to each prospective purchaser pursuant to Subsection R162-57a-11(2)(b)(i);

(iii) obtain a signed receipt for property report from a prospective purchaser prior to:

(A) executing a purchase agreement; or

(B) receiving any item of value toward the purchase of an interest; and

(iv)(A) clearly inform a purchaser of the purchaser's right to rescind the agreement if, during the rescission period mandated by Section 57-19-12, the purchaser expresses a desire to terminate a contract or agreement entered into by the purchaser; and

(B) ensure compliance with this Subsection (iv)(A) by:

(I) all subsidiaries of the developer;

(II) all persons affiliated with the developer; and

(III) all persons affiliated with a subsidiary of the developer.

(b) Prohibited conduct. A developer is subject to discipline if the developer or an affiliated person:

(i) makes a misrepresentation or material omission in a document submitted to the division; or

(ii) fails to comply with an order of the division.

(2) Salesperson. A salesperson shall comply with:

(a) Section 57-19 et seq.;

(b) these rules; and

(c) this Subsection (1)(a)(ii)-(iv).

R162-57a-15. Application for Registration of Project Sales Persons.

(1) An individual applying for registration as a project salesperson shall provide the following information to the division:

(a) identifying information, including:

(i) full legal name;

(ii) date of birth; and

(iii) social security number;

(b) contact information, including:

(i) home address;

(ii) home telephone and cell telephone numbers;

(iii) mailing address;

(iv) e-mail address;

(v) sales office location and e-mail address;

(vi) sales office telephone number; and

(vii) name of developer or an individual designated by the developer who will supervise the applicant pursuant to Subsection R162-57a-13(1)(a).

(c)(i) disclosure as to whether the individual has ever been licensed or registered in a real estate-related profession; and

(ii) documentation of any adverse regulatory action on such license or registration, including:

(A) denial;

(B) restriction, including probation;

(C) suspension;

(D) revocation; or
(E) fine;
(d) disclosure as to whether the individual has ever resigned or surrendered a real estate-related license or registration, or allowed such a license or registration to expire, while under investigation or while action was pending against the individual by a government agency;
(e) information as to any disciplinary action pending against the individual at the time of application by any real estate, professional, or occupational licensing agency;
(f) documentation of any criminal investigation proceeding against the individual at the time of application;
(g) complete documentation of any past criminal offense, including:
(i) charge(s) filed;
(ii) plea(s) entered;
(iii) case disposition; and
(iv) terms of sentencing;
(h) complete documentation of any past civil judgment entered against the person in a case brought on allegations involving fraud, misrepresentation, or deceit;
(i) completed five-year employment history form as provided by the division;
(j) affidavit stating whether the individual has ever been terminated from employment on an allegation of theft, fraud, or dishonesty; and
(k) a nonrefundable application fee.
(2) An application for registration as a project salesperson shall be signed by:
(a) the applicant; and
(b)(i) the developer with which the salesperson is affiliated; or
(ii) the developer's authorized representative pursuant to Subsection R162-57a-13(1)(a).
(3) Standards for approval. The director may not issue a salesperson registration to any individual who:
(a) submits an incomplete application;
(b) has been prosecuted for a felony that resulted in a:
(i) conviction within the five-year period preceding the date of application;
(ii) plea agreement within the five-year period preceding the date of application; or
(iii) jail or prison release date falling within the five-year period preceding the date of application; or
(c) has been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:
(i) conviction within the three-year period preceding the date of application; or
(ii) jail or prison release date falling within the three-year period preceding the date of application.
(4) Notification of changes.
(a) A registered salesperson shall inform the division within ten days of:
(i) any change in the individual's legal name;
(ii) any change in the individual's contact information pursuant to Subsection (1)(b);
(iii) as to a criminal offense, whether prosecuted in Utah or in another jurisdiction:
(A) a conviction;
(B) the entry of a plea in abeyance;
(C) a diversion agreement; or
(D) any other agreement under which a criminal charge is held in suspense for a period of time.
(b) To notify the division of a name change, an individual shall:
(i) complete and submit a paper change form; and
(ii) attach to the form official documentation such as a:
(A) marriage license;
(B) divorce decree;
(C) driver license; or
(D) court order.
(c) To notify the division of a change in contact information, an individual shall submit a change form:
(i) by mail or fax, until such time as RELMS is configured to accommodate timeshare salespersons; and
(ii) through RELMS, once the system is configured to accommodate timeshare salespersons.
(d) To notify the division of proceedings in a criminal case, an individual shall:
(i) send to the division a cover letter explaining the circumstances under which charges were brought; and
(ii) attach all available documentation, including:
(A) charging documents;
(B) police reports; and
(C) court dockets.
(5) Renewal and reinstatement.
(a) A salesperson registration expires two years following the date the registration is approved by the division.
(b) To renew a salesperson registration, an individual shall submit to the division, no later than the date on which the individual's registration expires:
(i) a completed renewal application as required by the division; and
(ii) a nonrefundable fee.
(c) To reinstate an expired salesperson registration, and individual shall submit to the division, no later than 30 days following the date on which the individual's registration expires:
(i) all materials required for a timely renewal; and
(ii) a nonrefundable late fee.
(d) An application that is expired more than 30 days may not be renewed. To obtain a registration, an individual shall apply as a new applicant.

R162-57a-17. Administrative Procedures.

The following matters shall be decided by the director through an informal adjudicative proceeding, with no hearing permitted:
(1) issuance of an initial registration;
(2) renewal or reinstatement of an existing registration;
(3) denial of any application for registration; and
(4) a request:
(a) to amend a property report;
(b) for consolidation of a registration;
(c) for waiver of, or exemption from, registration requirements; and
(d) for a temporary permit pending registration with the division.

R162-57a-26. Exemptions.

(1) The following sales are essentially noncommercial and, therefore, exempt from the requirements of Section 57-19, et seq. by operation of law:
(a) the bulk sale of interests by a developer to another person who will become the developer of the project;
(b) after a project has been sold out and its registration with the division has expired, the resale of interests that are foreclosed by the developer or the developer's successor-in-interest, so long as:
(i) no more than ten interests in the project are foreclosed and resold over the life of the project; and
(ii) the foreclosed interests are not offered with interests in other projects as part of a common promotional plan;
(c) the resale by a lender of foreclosed interests, so long as the lender does not foreclose more than ten interests in the project over the life of the project;
(d) the sale, to a person who has previously purchased an interest in a project, of additional interests in the same project, provided that the person is timely provided with a valid property

report at the time of the original purchase; and

(e) the sale of a purchaser's individual interest on a for-sale-by-owner basis.

(2)(a) A person who believes a sale not specifically delineated in Subsection (1) is essentially non-commercial shall apply to the division for an order of exemption.

(b) An exemption granted under this Subsection (2)(a) is valid for a period of one year and expires unless renewed through reapplication.

KEY: timeshare, camp resort, registration, professional conduct
April 2, 2013 **57-19-3**
57-19-5 through 57-19-26

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authorization and Purpose.

As provided in Section 63M-7-506 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63M-7-511(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-3. Negligent Homicide and Hit and Run Claims.

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).

B. Pursuant to Subsection 63M-7-502(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for the lesser of 25 aggregate individual and/or group counseling sessions or $2,500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for the lesser of 15 aggregate individual and/or group counseling sessions or $1,250 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

8. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

9. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

10. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVRA Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

11. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

12. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

13. The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

14. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVRA Board may review

extenuating circumstance cases.

R270-1-5. Attorney Fees.

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an ongoing basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

Pursuant to Section 63M-7-503, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-7. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-331 shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63M-7-522, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-9. Loss of Earnings.

A. Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. The Crime Victim Reparations and Assistance Board may review extenuating circumstances on loss of earnings claims for the purpose of consideration and authorization of extensions beyond set limits.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $1,000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The Board may approve travel expenses in excess of $1000 where extenuating circumstances exist.

R270-1-11. Collateral Source.

A. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

B. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

R270-1-12. Record Retention.

A. Pursuant to Section 63M-7-501, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to State Archives. Case files will be retained in the State Records Center for eleven years and then destroyed.

R270-1-13. Awards.

A. Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

R270-1-14. Essential Personal Property.

A. Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim.

B. The Reparation Officer may allow up to $5000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of $5000 where extenuating circumstances exist.

C. The Reparation Officer may allow up to $1500 for essential personal property not included in Subsection (B) such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board may approve expenses for essential personal property in excess of $1500 where extenuating circumstances exist.

R270-1-15. Subrogation.

A. Pursuant to Section 63M-7-519, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

B. Pursuant to Subsection 63M-7-519(2)(a) and (b), in such instances where a settlement against a third party appears imminent, the Director may reduce by up to 33% the lesser of; (a) the amount paid by the state; or (b) the amount of the settlement. Reduction in excess of 33% shall be determined by the CVRA Board with the concurrence of the Director.

R270-1-16. Unjust Enrichment.

A. Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to

pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-17. Prescription or Over-the-Counter Medications.

A. Reimbursement of prescription or over-the-counter medications used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

C. Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

R270-1-18. Peer Review Committee.

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations and Assistance Board by written internal policy and procedure.

R270-1-19. Medical Awards.

A. Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4.a. If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, Crime Victim Reparations shall pay 70% of billed charges for eligible medical bills.

b. If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, Crime Victim Reparations shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance agreement.

c. This subsection (4) does not apply to expenses governed by R270-1-4 or R270-1-22.

5. This rule supersedes any other agreements regarding payment of medical bills by Crime Victim Reparations.

6. Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

R270-1-20. Misconduct.

Pursuant to Subsections 63M-7-502(22) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based. CVR staff shall not consider any behavior or action of any victim that is committed by the victim while under the duress or experience of threat, exploitation, coercion or any circumstance absent the victim's own willful desire to participate or any behavior or action committed or perceived to have been committed by the victim of any sex crime when determining whether the victim engaged in misconduct.

R270-1-21. Three Year Limitation.

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with CVR. Reparations Officers may extend claims that have been closed because of the Three Year Limitation rule if extenuating circumstances exist.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by CVR in the amount of $300.00 without photo documentation and up to $600.00 with a photo examination. Pursuant to Section 63M-7-521.5, CVR may also pay for the cost of medication and 70% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed $350.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

4. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

5. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

6. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

7. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

8. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

9. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

10. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before Crime Victim Reparations Trust Fund monies are used. Pursuant to Subsection 63M-7-513(5), the Director may

determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

11. Evidence will be collected only with the permission of the victim or the legal guardian of the victim.

12. Restitution for the cost of the sexual assault forensic examination may be pursued by CVR.

13. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical; and

iii. collection of specimens and wet mount for sperm.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy;

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

v. treatment for the prevention of sexually transmitted disease up to four weeks.

14. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-23. Loss of Support Awards.

A. Pursuant to Subsection 63M-7-511(4)(g), loss of support awards shall be covered on death claims only.

B. Except as provided in Subsection (C), loss of support awards are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

C. The Crime Victim Reparations and Assistance Board may approve loss of support awards to persons who are not minor children, but were physically and financially dependent on the deceased victim.

R270-1-25. Secondary Victim.

Secondary victims who are not primary victims pursuant to Subsections 63M-7-502(33) and who are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVRA Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, grandparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) or other persons who the Reparation Officer reasonably determines bears an equally significant relationship to the primary victim.

R270-1-26. Victim Services.

A. Pursuant to Subsection 63M-7-506(1)(i), there is established a Victim Services Grant Program.

B. For purposes of Subsection 63M-7-506(1)(i), "sufficient reserve" means enough funds to sustain the operation of the Crime Victim Reparations program, including administrative costs and reparations payments, for one year.

C. The CVRA Board shall annually determine whether a sufficient reserve exists in the Crime Victim Reparation Fund. If a sufficient reserve does not exist, the CVRA Board shall not authorize the Victim Services Grant Program for that year. If a sufficient reserve does exist, the CVRA Board may authorize the Victim Services Grant Program for that year.

D. When the Victim Services Grant Program is authorized, the CVRA Board:

1. shall determine the amount available for the Victim Services Grant Program for that year;

2. shall announce the availability of grant funds through a request for proposals or other similar competitive process approved by the Board; and

3. may establish funding priorities and shall include any priorities in the announcement of grant funds.

E. Requests for funding shall be submitted on a form approved by the CVRA Board.

F. The CVRA Board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The CVRA Board may award less than the amount determined in Subsection (D)(1). The decisions of the CVRA Board may not be appealed.

G. All awards shall be for a period of not more than one year. An award by the CVRA Board shall not constitute a commitment for funding in future years. The CVRA Board may limit funding for ongoing projects.

H. Award recipients shall submit quarterly reports to the Crime Victim Reparations and Assistance Board on forms established by the Director. The CVR staff shall monitor all victim services grants and provide regular reports to the CVRA Board.

R270-1-27. Nontraditional Cultural Services.

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

KEY: victim compensation, victims of crimes
April 22, 2013 63M-7-501 et seq.
Notice of Continuation June 29, 2011

R277. Education, Administration.
R277-101. Utah State Board of Education Procedures.
R277-101-1. Definitions.

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

B. "Board leadership" means the Leadership Committee as defined in the Board Bylaws.

C. "Chair" means duly elected Chairperson of the Board, Vice-chair, or Chair of a Board standing committee.

D. "Conflict of interest" means a business, family, monetary or relationship concern that may cause a reasonable person to be unduly influenced or that creates the appearance of undue influence.

E. "Health, safety, and welfare of students" means such concerns as adequate and safe buildings and facilities and transportation vehicles, required immunizations and health screenings, required criminal background checks and reviews on potential teachers and employees, required curriculum that allows for complete transferability of credit and other similar standards and protections.

F. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

G. "Official action" taken by local education agency (LEA) boards means action taken in appropriately advertised board meetings, where votes and minutes are recorded and available for public review.

H. "State or federal law or regulations" means federal law and regulations including Department of Agriculture regulations that govern the Child Nutrition Program as it operates in Utah public schools, the Individuals with Disability Education Act (IDEA), including federal and state implementing regulations and state administrative rules.

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

R277-101-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 52-4-1 which directs that the actions of the Board be taken openly and that its deliberations be conducted openly 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 describe procedures to be followed by the Board in its conduct of the public's business in order to:

(1) hear from those who desire to be heard on public education matters in the state;

(2) effectively and efficiently utilize the time of the Board;

(3) enable staff to provide timely and essential information; and

(4) balance desire for public information with other demands on the Board's time.

R277-101-3. Public Participation.

A. Citizens may attend meetings of the Board. The Board welcomes public participation during Board meetings.

B. Citizens may speak to the Board when acknowledged and recognized by the Board Chair:

(a) to issues not on the agenda during the time designated for public comment.

(i) Priority shall be given to those individuals or groups who, prior to the meeting, have submitted a written request to address the Board, including a brief description of the issue to be addressed.

(ii) No action shall be taken by the Board during the public comment portion of the meeting.

(iii) At the Board's discretion, a Board member may request that an item raised during public comment be placed on a future agenda for possible action.

(iv) The Chair may limit the time available for individual comments; number of comments and time limits shall be stated prior to the public comment portion of the agenda.

(v) The Chair may request groups to designate a spokesperson.

(b) to items on the agenda during the time designated for public comment, or at the discretion of and as invited by the Chair, when the item is properly before the Board or committee. The Chair may request that public comments be provided in writing.

C. All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

D. Additional comments to the Board or committees may only be made as recognized and invited by the Board Chair during a meeting.

R277-101-4. Reconsideration on Previous Board Action.

A. The Board has discretion to reconsider any decision it has made.

B. A motion to reconsider shall be made in a meeting of the Board that satisfies requirements of Section 52-4 by a Board member who voted on the prevailing side of the previous Board vote.

C. A motion to reconsider requires a second.

D. A motion to reconsider a previous Board decision shall be ruled in order by the Board Chair only with adequate time for Board members to receive information and discuss the issue, as determined by the presiding Board officer.

E. The Board Chair shall determine the procedures for the reconsideration discussion; for instance:

(1) The Board Chair shall determine if the Board shall accept public testimony and how long the discussion shall continue;

(2) The Board Chair shall determine if the reconsideration vote may take place at the next regularly scheduled Board meeting if such meeting allows time for adequately providing information to Board members;

(3) The Board Chair shall determine if more information is necessary prior to a vote, even if the Board vote is to be held at the same Board meeting.

F. The Board shall consider and hear available evidence, including documentation of detrimental or positive consequences specifically to LEAs or other entities, that may occur if the Board reverses a previous decision.

G. The motion to reconsider shall pass if two-thirds of the total membership of the Board votes in favor of the motion.

H. If a motion to reconsider fails, the Board shall not consider a motion on the same or substantially similar motion to reconsider in the same meeting.

I. A Board vote taken upon reconsideration of the same or substantially similar issue is the administrative decision by the Board.

R277-101-5. Board Waiver of Administrative Rules.

A. Criteria for waiver of Board Rules:

(1) The Board shall consider waiver requests consistent with its constitutional responsibility for general control and supervision of the public education system.

(2) Prior to waiver, the Board shall consider whether a local board's or local charter governing board's request could be accomplished through means other than waiver of Board rules.

(3) The Board shall waive rules only following a thorough review of available data and shall make data driven decisions.

(4) The Board shall not waive rules:

(a) that are required by and adopt criteria from federal or state law or regulations;

(b) that negatively affect the health, safety or welfare of public education students;

(c) if the waiver could reasonably result in discrimination or harassment of public school students or employees;

(d) that benefit one element or segment of the public education system to the detriment of another.

(5) Waivers shall always include an effective time period for the waiver, public review and accountability provisions and a sunset date.

(6) Prior to consideration by the Board, waivers requested by charter schools shall be presented to and considered by the State Charter School Board. Information and documentation of this action shall be available to the Board.

(7) All Board evaluations, considerations, and decisions shall be made in the Board's sole discretion.

B. Procedures for waiver of Board rules:

(1) A local board of education or a charter school governing board may request a waiver from Board rule(s) in writing consistent with USOE timelines and on forms available from the USOE by submitting to the Board a written request showing a vote by the local board requesting the waiver in an open board meeting.

(2) Complete waiver requests shall be reviewed first by a Board Committee during a regularly scheduled Board meeting.

(3) The Board Committee designated by Board leadership shall review the request, solicit additional information or testimony, if helpful, and make a recommendation for consideration by the full Board of Education.

(4) Board leadership or a Board Committee shall make a reasonable determination of the time or Committee meetings necessary for careful review of request(s) for waiver of Board rules; Board leadership may consolidate consideration of duplicate or similar requests.

(5) At a minimum, the following shall be required from LEAs seeking a waiver of Board rules:

(a) student achievement data that support the requested waiver;

(b) data demonstrating the cost effectiveness, without sacrificing student achievement, of the waiver request;

(c) a draft proposed agreement that outlines USOE and local board responsibilities, data gathering and reporting timelines if a waiver is granted by the Board.

(6) Upon direction by the Board, an LEA shall make a presentation to an assigned Board Committee.

(7) Board leadership shall notify the local board of a proposed timeline for the Board to consider the request for waiver and provide a written decision, including an agreement between the Board and the local governing board, to the local board.

C. Public process and documents:

(1) Materials presented to the Board by the local board shall be public documents.

(2) Materials and draft agreements between the Board and the local board shall be protected draft documents.

(3) Final agreements between the Board and local governing boards shall be public documents and available for review by the public upon request consistent with the provisions of Title 63G, Chapter 2.

(4) Any breach of confidentiality while the discussion of agreements is in progress may compromise the fairness of the Board decision and may delay the discussion or Board decision or both.

KEY: school boards, open government
April 22, 2013 **Art X Sec 3**
Notice of Continuation August 1, 2012 **52-4-1**
53A-1-401(3)

R277. Education, Administration.
R277 113. LEA Fiscal Policies and Accountability.
R277-113-1. Definitions.

A. "Arm's length transaction" means a transaction between two unrelated, independent and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

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

C. "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

D. "Internal controls" are procedures designed to safeguard assets, detect errors and misappropriations, produce timely and accurate financial reports, and ensure compliance with laws and rules.

E. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and for purposes of this rule, the Utah Schools for the Deaf and the Blind.

F. "Management" means an LEA superintendent or director, deputy or associate, business administrator or manager, or other educational administrator or designated staff.

G. "Public funds" (Utah Code Section 51-7-3(25)) means money, funds, and accounts, regardless of the source from which the funds are derived, that are owned, held, or administered by the state or any of its political subdivisions including LEAs or other public bodies.

H. "School sponsored" means an activity, fundraising event, club, camp, clinic or other event or activity that is authorized by a specific LEA or public school which supports the LEA or authorized school club, activity, sport, class or program, that also satisfies at least one of the following conditions:

(1) it is managed or supervised by an LEA or public school, or LEA or public school employee;

(2) it uses the LEA or public school's facilities, equipment, or other school resources; or

(3) it is supported or subsidized, more than inconsequently, by public funds, including the public school's activity funds or minimum school program dollars.

I. "Utah Public Officers' and Employees' Ethics Act" (Utah Code Sections 67-16-1 through 15) means an Act that provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests.

R277-113-2. 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 Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures.

B. The purpose of this rule is to (1) require LEAs to formally adopt and implement policies regarding the management and use of public funds; (2) provide minimum standards, procedures and definitions for LEA policies; (3) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available; (4) require LEAs to train employees in appropriate financial practices, necessary accounting procedures and ethical financial practices; and (5) provide for consistency among LEAs regarding fiscal policies, procedures and accountability practices.

R277-113-3. Board Responsibilities.

A. The Board shall provide training and informational materials and model policies for use by LEAs in developing LEA and public school-specific financial policies about the use and management of public funds before March 31, 2013.

B. The Board shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds before March 31, 2013.

C. The Board may provide and establish a cycle for state review of LEA fiscal policies and standards.

D. The Board shall work with and provide information upon request to the Utah State Auditors Office, the Legislative Fiscal Auditors and other state agencies with the right to information from the Utah State Office of Education.

R277-113-4. LEA Responsibilities.

A. LEAs shall develop, have approved by local/charter boards and implement the fiscal policies required in R277-113-5 before September 15, 2013. These policies shall be in writing.

B. LEAs shall also develop a plan for training LEA and public school employees, at least annually, on policies enacted by the LEA specific to job function.

(1) These policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(2) The LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(3) LEAs may have one policy or more than one satisfying the minimum requirements of this rule.

(4) An LEA policy shall address how often the policy shall be reviewed, including periodic updates or training and resource manuals.

(5) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

C. An LEA shall designate board members to serve on an audit or finance committee. The LEA audit or finance committee has the following responsibilities:

(1) ensuring that management properly develops and adheres to a sound system of internal controls consistent with the requirements of R277-113-5;

(2) receiving a report of the risk assessment process undertaken by management in developing the system of internal controls;

(3) developing a process to review financial information, financial statements, and LEA and individual school records on a regular basis;

(4) ensuring that management conducts a competitive RFP process to hire external auditors and other professional services and making a recommendation to the LEA board on the results of the RFP process consistent with the State Procurement Code;

(5) receiving communication from or meeting with the external auditors annually and receiving a direct report of the audit findings, exceptions, and other matters noted by the auditor;

(6) reporting the annual audit reports and findings or other matters communicated by the external auditor or other regulatory bodies to the LEA board in a public meeting;

(7) ensuring that matters reported by external audits, internal audits, or other regulatory bodies are resolved in a timely manner.

D. The definition of school sponsored and requirements of R277-113-4F do not apply to activities, fundraising events, clinics, clubs, camps, or activities organized by a third party which have not been designated by the LEA as school sponsored. All transactions pertaining to nonschool sponsored

events shall be conducted at arm's length; revenues and expenditures shall not be commingled with public funds.

E. For nonschool sponsored events, funds may be managed or held by a public school employee, only consistent with R277-107.

F. LEAs and individual public schools shall comply with the following regarding school and nonschool sponsored activities:

(1) may enter into contractual agreements to allow for fundraising and use of LEA facilities. An agreement shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds. LEAs should consult with the LEA insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(2) shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes or programs to determine if the activities are school sponsored consistent within R277-113-1H;

(3) shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are considered public funds consistent with R277-113-1G;

(4) shall maintain adequate records to ensure that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by R277-113-5;

(5) shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by R277-113-5;

(6) shall make records of activities available to parents, students, and donors and shall maintain the records in sufficient detail to track individual contributions and expenditures as well as overall financial outcome. Records may be private or protected consistent with Sections 63G-2-302, 303, 305, and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g;

G. Public Education Foundations established by LEAs shall follow the requirements provided in Section 53A-4-205.

R277-113-5. Required LEA Fiscal Policies.

A. The following fiscal policies shall be required in each LEA. LEAs shall ensure that each policy addresses the specific Utah Code references or Board Rules in each section. The required items are minimum requirements. LEAs may include other related items, provide LEA specific policy and guidance, and set polices that are more restrictive and inclusive than the minimum provisions established by the Board.

B. LEAs shall ensure that policies address applicable elements from the Utah Public Officers' and Employees' Ethics Act, Utah Educator Standards (R277-515), and the definition of public funds.

C. LEA fiscal policies shall address the following:

(1) Cash Handling: The LEA cash handling policy shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received;

(b) compliance with Utah Code 51-4-2(2) regarding deposits.

(2) Expenditure of Public Funds: The LEA expenditure policy shall address expenditures made by checks, electronic transfers and credit/debit cards that are made by the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, credit or debit card transactions, employee reimbursements, travel, and payroll;

(b) directives regarding the appropriate use of the LEA tax exempt status number;

(c) compliance with Section 63G-6a-1204(7) regarding length of multi-year contracts;

(d) compliance with Section 63G-6-201 et seq. procurement state law and Board rule regarding construction and improvements, and compliance with Title IX; and

(e) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy.

(3) Fundraising: The LEA fundraising policy shall establish procedures for LEA and public school fundraising in general, establish an approval process for fundraising activities, school sponsored activities, provide for compliance with school fee and fee waiver provisions, and shall include:

(a) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;

(b) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;

(c) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(d) procedures governing LEA or public school employee interaction with parents, donors, and nonschool sponsored organizations;

(e) disclosure requirements for LEA and public school employees approving or otherwise managing or overseeing fundraising activities who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company.

(f) This policy shall be in harmony with Article X of the Utah Constitution establishing a free public education system, with R277-407 regarding school fees, and compliance with Title IX.

(g) The LEA may include procedures governing student participation and incentives offered to students, allowable types of fundraising activities, and participation in school sponsored activities by volunteer or outside organizations.

(4) Donations and Gifts: The LEA donation and gift policy shall establish acceptance and approval process for monetary donations, donations and gifts with donor restrictions, donations of gifts, goods, materials or equipment, and funds or items designated for construction or improvements of facilities, and shall include:

(a) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;

(b) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(c) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;

(d) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;

(e) procedures establishing provisions to direct donations or gifts to the LEA or LEA programs, individual public school or public school programs, and restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;

(f) compliance with Title 63G, Chapter 6 regarding the

procurement code, state law and Board rule regarding construction and improvements, IRS regulations and tax deductible directives, and compliance with Title IX.

(g) The LEA may include procedures for accepting donations and gifts through an LEA's legally organized foundation, if applicable, or procedures for recognition of donors, or granting naming rights.

R277-113-6. LEA Financial Policies and Compliance with State and Federal Law.

A. LEAs are responsible to ensure that policies comply with the following state laws and Board Rules:

(1) Utah Constitution Article X, Section 3;

(2) Utah Code 63G-6a, Utah Procurement Code;

(3) Utah Code 51-4, Deposit of Funds Due State;

(4) Utah Code 67-16, Utah Public Officers' and Employees' Ethics Act;

(5) 20 U.S.C. Section 1232g, Family Educational Rights and Privacy Act;

(6) Utah Code 63G-2, Government Records Access and Management Act;

(7) Utah Code Section 53A-12, Fees and Textbooks;

(8) Utah Code Section 53A-4-205, Public Education Foundations;

(9) R277-407, School Fees;

(10) R277-107, Educational Services Outside of Educator's Regular Employment;

(11) R277-515, Utah Educator Standards.

B. In establishing policies and providing staff training, LEAs shall consider requirements of Title IX, including:

(1) Fundraising shall equitably benefit boys and girls;

(2) Boys and girls shall have reasonably equal access to facilities, fields and equipment;

(3) School sponsored activities shall be reasonably equal for boys and girls.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee
April 22, 2013 **Art X, Sec 3**
53A-1-401(3)
53A-1-402(1)(e)

R277. Education, Administration.
R277-445. Classifying Small Schools as Necessarily Existent.
R277-445-1. Definitions.

A. "ADM" means average daily membership derived from end-of-year data.

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

C. "Superintendent" means the State Superintendent of Public Instruction.

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

E. "WPU" means weighted pupil unit: the basic unit used to calculate the amount of state funds a school district may receive.

R277-445-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-109(1) which requires the Board to adopt rules that govern the approval of necessarily existent small schools consistent with state law and ensure that districts are not building secondary schools in close proximity to one another where economy and efficiency would be better served by one school meeting the needs of secondary students in a designated geographical area.

B. The purpose of this rule is to specify the standards by which the Board classifies schools as necessarily existent. Schools so classified may receive state funds which are in addition to those received on the basis of the regular WPU formula.

R277-445-3. Standards.

A. A school may be classified as necessarily existent if it meets the following standards:

(1) the average daily membership for the school does not exceed:

(a) 160 for elementary schools, including kindergarten at a weighting of .55 per average daily membership; or

(b) 300 for one or two-year secondary schools; or

(c) 450 for three-year secondary schools; or

(d) 500 for four-year secondary schools; or

(e) 600 for six-year secondary schools.

(2) the school meets the criteria of Subsection 3(A)(1) and one-way bus travel over Board approved bus routes for any student from the assigned school to the nearest school within the district of the same type requires:

(a) students in kindergarten through grade six to travel more than 45 minutes;

(b) students in grades seven through twelve to travel more than one hour and 15 minutes.

(3) the school meets the criteria of Subsection 3(A)(1) for grades K-6 if it is an elementary school or grades 7-12 if it is a secondary school except as provided below:

(a) schools with less than six grades are not recognized as necessarily existent small schools if it is feasible in terms of school plant to consolidate them into larger schools and if consolidated would not meet the criteria listed in Subsections 3(A)(1) and 3(A)(2) above;

(b) a secondary complex or attendance area which when analyzed on a 7-12 grade basis, meets the criteria of necessarily existent, shall not have its qualifying status invalidated by a reorganization pattern determined by a district;

(c) in unusual circumstances, where in the judgment of a panel of at least five USOE staff members designated by the Superintendent, the existing conditions warrant approval of a middle school, such a school may be designated by the Superintendent as a necessarily existent small school, provided it meets the criteria listed in Subsection 3(A)(1) above or 3(A)(4) below.

(4) the school meets the criteria of Subsection 3(A)(1), may not meet the criteria of Subsection 3(A)(2), but is in a district which has been consolidated to the maximum extent possible, and activities in cooperation with neighboring districts within or across county boundaries are appropriately combined;

(5) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), but there is evidence acceptable to the Superintendent of increased growth in the school sufficient to take it out of the small school classification within a period of three years.

(a) The school may be classified as necessarily existent until its ADM surpasses the size standard for small schools of the same type.

(b) The school's ADM shall be annually compared to the school's projected ADM to determine increases or decreases in enrollment.

(c) An increase in the school's ADM shall be 80 percent of the projected annual increase. If the assessment for the first or second year shows the increase in the ADM is less than 80 percent, the school shall no longer be classified as necessarily existent;

(6) the school meets both the criteria of Subsection 3(A)(1) and at least the accredited with comment level of Board accreditation standards (as provided in R277-410, R277-411, and R277-412), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), or 3(A)(5), but there is evidence as determined by the Superintendent that consolidation may result in undesirable social, cultural, and economic changes in the community, and:

(a) the school has a safe and educationally adequate school facility with a life expectancy of at least ten years, as judged, at least every five years, by the USOE after consultation with the district; or

(b) the district shall incur construction costs by combining a school seeking necessarily existent small school status with an existing school and such construction and land costs exceed the insurance replacement value of the exiting school by 30 percent. The existing school shall have a life expectancy of at least ten years. In the event that the ADM from the school seeking necessarily existent small school status when combined with the ADM at the existing school exceed criteria in R277-445-3A(1), the existing school would be disqualified.

(c) schools qualifying under standard (b) above shall be evaluated every five years.

(7) the school meets the criteria of Subsection 3(A)(1), does not meet the criteria of Subsections 3(A)(2), 3(A)(3), 3(A)(4), 3(A)(5), or 3(A)(6), and the removal of the necessarily existent status results in capital costs which the school district cannot meet within three years when utilizing all funds available from local, state, or federal sources or a combination of the sources.

B. Additional WPU funds allocated to school districts for necessarily existent small schools shall be utilized for programs at the school for which the units were allocated. The funds must supplement and not supplant other funds allocated to special schools by the local board of education.

C. Schools shall be classified after consultation with the district and in accordance with applicable state statutes and Board standards.

KEY: school enrollment, educational facilities
April 8, 2013 **Art X Sec 3**
Notice of Continuation August 14, 2012 **53A-1-401(3)**
53A-17a-109(1)

R277. Education, Administration.
R277-460. Distribution of Substance Abuse Prevention Account.
R277-460-1. Definitions.

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

B. "Educational materials" means visual and auditory media, curricula, textbooks, and other disposable or non-disposable items that enhance student understanding of the subject matter.

C. "Evaluation" means a review by a person or group which assesses procedures, results and products specific to a program.

D. "Local Substance Abuse Authority" means the person or group designated by the Legislature as the county authority to receive public funds for substance abuse prevention and treatment.

E. "Prevention education" means proactive educational activities designed to eliminate any illegal use of controlled substances.

F. "Superintendent" means the State Superintendent of Public Instruction.

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

H. "Utah Substance Abuse Prevention Guiding Principles" means criteria established by the Utah Division of Substance Abuse and Mental Health to be used in selecting or developing substance abuse prevention materials.

R277-460-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-13-102 which directs the Board to adopt rules providing for instruction on the harmful effects of controlled substances and by Section 51-9-405 which provides for funds from the Substance Abuse Prevention Account to be allocated to the USOE for:

(1) substance abuse prevention and education;

(2) substance abuse prevention training for teachers and administrators; and

(3) school district, charter school or consortia programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

B. The purpose of this rule is to provide for the distribution of the USOE's share of the Substance Abuse Prevention Account.

R277-460-3. Fund Allocations.

A. The USOE shall retain sufficient funds to pay for the salary, benefits and indirect costs of a .5 FTE Program Administrator at a salary level to be determined by the Board.

B. The remaining funds shall be allocated as follows:

(1) An amount not to exceed fifteen percent shall remain at the USOE to purchase educational materials to support and supplement existing Utah's Substance Abuse Prevention Program, Prevention Dimensions.

(2) An amount not to exceed fifteen percent shall remain at the USOE to encourage and support statewide substance abuse prevention training for school district/charter school teachers and administrators.

(3) An amount not to exceed fifteen percent shall remain at the USOE to promote Utah's Substance Abuse Prevention Program and encourage its classroom use by Utah educators.

(4) A minimum of fifty-five percent shall be distributed to school districts, charter schools or consortia for use by the school district, individual schools, charter schools or consortia in a cooperative substance abuse prevention effort based on application.

R277-460-4. Applications.

A. Applications shall be provided by the USOE.

B. School districts, charter schools or consortia shall submit applications to the specialist designated by the USOE.

C. The USOE specialist shall make funding recommendations to the USOE Finance Committee as soon as reasonably possible after the application deadline.

D. Awards per school districts, charter schools or consortia shall be based on funds available and specific funding amounts shall be provided in the USOE application.

E. Only applications for funding that propose projects or programs consistent with the Utah Substance Abuse Prevention Guiding Principles shall be considered for funding.

(1) Applications shall address the following:

(a) the applicant's intention to collaborate with the local substance abuse authority and community groups within the school district, including shared plans and strategies for activities and intervention;

(b) the applicant's plan for professional development and teachers' use of Prevention Dimensions materials within their classrooms;

(c) the use of funds to implement applicant's plan;

(d) teacher reports of classroom implementation and plans for classroom monitoring visits;

(e) applicant's enhancement of Prevention Dimensions with additional substance abuse activities and strategies; and

(f) applicant's implementation of Prevention Dimensions with school-based behavioral/health or coordinated school health initiatives.

F. Projects receiving funding shall be notified of funding approval by the USOE Finance Committee.

R277-460-5. Limitations on Funds.

A. Funds shall be used by the USOE, school districts, charter schools and consortia exclusively for purposes set forth in Section 51-9-405.

B. Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the USOE.

C. Funds received by school districts, charter schools or consortia shall not be used to supplant either currently available school district or charter school funds or funds available from other state or local sources.

R277-460-6. Evaluation and Reports.

A. An applicant that accepts a USOE Substance Abuse Prevention award shall provide the USOE with a year-end evaluation report before July 1 of the fiscal year in which the award was made.

B. The year-end report shall include:

(1) an expenditure report;

(2) a narrative description of activities funded; and

(3) copies of all products and materials developed with USOE Substance Abuse Prevention funds.

C. The USOE may require additional evaluation or audit procedures from an award recipient to demonstrate the use of funds consistent with the law and Board rules.

R277-460-7. Waivers.

The Superintendent may grant a written request for a waiver of a requirement or deadline which a school district, charter school or consortia finds unduly restrictive.

KEY: public schools, substance abuse prevention

October 11, 2011	**Art X Sec 3**
Notice of Continuation June 2, 2008	**53A-13-102**
	51-9-405

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

A. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

B. "Basic skills course" means a subject which requires mastery of specific functions to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression.

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

D. "Commission" means the Instructional Materials Commission.

E. "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, objectives and assessments set by the state or school district for specific courses or grade levels.

F. "Curriculum map" means a visual representation, a tool, for assisting developers to conceptualize shared visions and values which will drive the curriculum as a whole. Sometimes called a concept map, this tool clarifies a plan for knowledge construction; it shows the links and relationships between concepts.

G. "Instructional materials" means systematically arranged content in text or digital format which may be used within the state curriculum framework for courses of study by students in public schools, including textbooks, workbooks, computer software, online or internet courses, CDs or DVDs, and multiple forms of communication media. Such materials may be used by students or teachers or both as principal sources of study to cover any portion of the course. These materials:

(1) shall be designed for student use; and

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

(3) shall include all textbooks, workbooks and student materials and supplements necessary for a student to fully participate in coursework; and

(4) shall be high quality, research-based and proven to be effective in supporting student learning.

H. "Independent party" means an entity that is not the Board, not the superintendent of public instruction or USOE staff, or an employee or board member of a school district, or the instructional materials creator or publisher, or anyone with a financial interest in the instructional materials, however minimal.

I. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

J. "Instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

K. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

L. "National Instructional Materials Access Center (NIMAC)" is a central national repository established at the American Printing House for the Blind (APH) to store and to maintain NIMAS file sets. It features an automated system for allowing publishers to deposit NIMAS-conformant files within the repository. Files are checked to confirm that they are valid NIMAS-conformant files and then cataloged in a web-based database. Those who have been authorized for access have user identifications and passwords. These authorized users may search the NIMAC database and directly download the file(s) they need to convert into accessible instructional materials for those students who are in elementary and secondary schools and have qualifying disabilities.

M. "National Instructional Materials Accessibility Standard (NIMAS)" is a technical standard used by publishers to produce consistent and valid XML-based source files that may be used to develop multiple specialized formats, such as Braille or audio books, for students with print disabilities.

N. "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

O. "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in R277-700-4, 5, and 6.

P. "Public website" means a website designated by the USOE provided by the publisher of instructional materials, free-of-charge, to teachers and the general public, to exhibit alignment and mapping to the Core for Utah primary instructional materials.

Q. "Recommended instructional materials (RIMs)" means the recommended instructional materials searchable database provided as a free service by the USOE for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers and on the public website of the publisher, if applicable, for review by the Commission and approval of the Board.

R. "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools. The Core is provided in R277-700.

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

T. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) criterion-referenced achievement testing of students in all grade levels in:

(a) language arts (grades 3-11);

(b) mathematics (grades 3-7) and pre-algebra, elementary Algebra 1, Algebra 2 and geometry;

(c) science (grades 4-8) and earth systems, biology, chemistry, and physics; and

(2) an online direct writing assessment in grades 5 and 8;

(3) a tenth grade basic skills competency test as detailed in Section 53A-1-611 (suspended through at least the 2011-2012 school year); and

(4) the use of student behavior indicators in assessing student performance.

(5) The U-PASS Performance Report is suspended through at least the 2011-2012 school year.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board, by Section 53A-14-107 which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional

materials and requirements for the detailed summary of the evaluation and its placement on a public website, and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools. The rule also provides for mapping and alignment of primary instructional materials to the Core consistent with Utah law.

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

A. School districts may use funds:

(1) for any primary supplemental or supportive instructional materials that support Core or U-PASS requirements.

(2) for instructional materials selected and approved by a school or school district consistent with the standards of this rule and:

(a) consistent with established local board procedures and timelines; and

(b) consistent with Section 53A-13-101(1)(c)(iii); or

(c) consistent with Section 53A-14-102(4).

B. Schools or school districts that use any funding source to purchase materials that have not been recommended or selected consistent with law, may have funds withheld to the extent of the actual costs of those materials pursuant to Section 53A-1-401(3).

C. Free instructional materials:

(1) that are used as primary instructional materials or that are part of primary integrated instructional programs shall be subject to the same independent party evaluation and Core mapping as basal or Core material; or

(2) if free materials are provided as part of a supplemental program, they may be used as student instructional materials only consistent with the law and this rule; and

(3) shall be reviewed and recommended by the Commission or by a school in a public meeting consistent with Section 53A-14-102(4), prior to their use.

D. Charter schools are exempt from Section 53A-14-107. Despite this exemption and consistent 34 CFR 300.172(c) (2007 edition), hereby incorporated by reference, all public schools subject to a state education agency that contracts with NIMAC require publishers with whom the public schools under the control of the state education agency contract to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instruction materials using the NIMAS or purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

E. Notice to publishers

(1) All traditional and charter public schools shall be responsible for notifying all publishers with whom they contract for instructional materials beginning October 1, 2008 that all materials shall be provided consistent with R277-469-3D.

(2) Traditional and charter schools shall include a copy of R277-469, drawing publishers' attention to this provision of the rule, with the notice to publishers from whom the schools purchase materials.

(3) Schools shall provide publishers with timely notice of this requirement.

R277-469-4. Instructional Materials Commission Members Terms of Service.

A. Members shall be appointed from categories designated in Section 53A-14-101.

B. Members of the Commission shall serve four year terms, staggered to ensure continuity in the efficient operation of the Commission. Members may apply for reappointment for one additional term.

C. The Commission may establish subcommittees as needed.

R277-469-5. Commission Review of Materials.

A. The primary focus of instructional materials review shall be materials used in subjects assessed under U-PASS to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, and other Core subject areas as assigned by the Board.

B. Subject areas and timelines for review shall be determined by the Commission based on school district needs and requests, and using forms and procedures provided by the USOE.

C. Commission review of material takes place at least annually.

R277-469-6. Review and Adoption Categories.

Materials may be considered for review by the Commission and designated under the following categories. They may be purchased with state funds and used consistent with this rule:

A. Recommended Primary: Instructional materials that:

(1) are in alignment with content, philosophy and instructional strategies of the Core;

(2) have been mapped and aligned to the Core, consistent with Section 53A-14-107 after the 2012-2013 school year;

(2) are appropriate for use by students as principal sources of study;

(3) provide comprehensive coverage of course content; and

(4) support Core or U-PASS requirements or both.

B. Recommended Limited: Instructional materials that are in limited alignment with the Core or U-PASS requirements or are narrow or restricted in their scope and sequence. If school districts or schools select and purchase materials designated under this category, it is recommended that they have a plan for using appropriate supplementary materials assuring coverage of Core requirements.

C. Recommended Teacher Resource: Instructional materials that are appropriate as resource materials for use by teachers.

D. Recommended Student Resource: Instructional materials aligned to the Core or that support U-PASS that are developmentally appropriate, but not intended to be the primary instructional resource. These materials may provide valuable content information for students.

E. Reviewed, but not Recommended: Instructional materials that may not be aligned with the Core, may be inaccurate in content, include misleading connotations, contain undesirable presentation, or are in conflict with existing law and rules. School districts are strongly cautioned against using these materials.

F. Not Sampled: Instructional materials that were included in the publisher bid but were not sampled to the USOE or the Commission.

R277-469-7. Criteria for Recommendation of Instructional Materials Following Mid-Party Evaluation of Core Curriculum.

A. Instructional materials shall:

(1) be consistent with Core or U-PASS requirements or both;

(2) if used as primary materials, be mapped and aligned to the Core consistent with Section 53A-14-107 and state adopted assessments as applicable for the 2012-2013 school year;

(3) be high quality, research-based and proven to be effective in supporting student learning;

(4) provide an objective and balanced viewpoint on issues;

(5) include enrichment and extension possibilities;

(6) be appropriate to varying levels of learning;
(7) be accurate and factual;
(8) be arranged chronologically or systematically, or both;
(9) reflect the pluralistic character and culture of the American people and provide accurate representation of diverse ethnic groups;
(10) be free from sexual, ethnic, age, gender or disability bias and stereotyping; and
(11) be of acceptable technical quality.

B. Publishers, when submitting new primary material to be evaluated by the USOE, shall submit an electronic version in NIMAS file format of that material to the National Instructional Materials Access Center (NIMAC) for use in conversion into Braille, large print, and other formats for students with print disabilities.

C. USOE review:

(1) The USOE may require a school district to provide a report of instructional materials purchased by the school district or a school in the previous five years.

(2) The USOE may initiate a formal or informal audit of instructional materials purchased to determine purchase or use of instructional materials consistent with the law or this rule.

R277-469-8. Agreements and Procedures for School Districts.

A. A local board shall establish a policy for school district and school selection and purchase of instructional materials.

B. The detailed Core curriculum alignment shall be required prior to the purchase of primary instructional materials by public schools and school districts purchased for the 2012-2013 school year.

R277-469-9. Qualifications for Core Curriculum Alignment Independent Parties.

Independent parties required to meet mapping and alignment requirements for the 2012-2013 school year shall use reviewer(s)/employee(s) who meet the following minimum requirements:

(1) have a degree or an endorsement specific to the subject area of the primary instructional materials. For example, a reviewer who is aligning an American literature text shall have an English endorsement or degree; a reviewer who is mapping a calculus text shall have a mathematics endorsement or a related mathematics degree. The USOE shall make available to independent parties a list of acceptable endorsements or degrees that shall be current and valid for appropriate review of materials; and

(2) may not be current employees of a publishing company seeking the alignment and map of primary instructional materials;

(3) shall post documentation of credentials and endorsements on a public website designated by the USOE as required under Section 53A-14-107(3)(b).

R277-469-10. Detailed Summary Requirements.

Independent parties required to meet mapping and alignment requirements for the 2012-2013 school year shall provide to the publisher a detailed summary of the evaluation. The summary shall:

A. be provided on a public website required under Section 53A-14-107(3)(b) designated by the USOE;

B. submit the summary in the alignment template provided by the USOE;

C. submit the summary in a searchable, software database format designated by the USOE;

D. include detailed alignment information that includes at a minimum:

(1) the title of the material;
(2) the ISBN number;
(3) the publisher's name;
(4) the name/grade of the Core document used to align the material;
(5) the overall percentage of coverage of the Core;
(6) the overall percentage of coverage in ancillary resources of the material to the Core;
(7) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;
(8) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard;
(9) objective and indicator in the Core with corresponding page numbers; and

E. provide the detailed alignment information listed in R277-469-10D(4) for the student text for all editions of the text that are used in Utah public schools;

F. provide the detailed alignment information listed in R277-464-10D(4) for a teacher edition of text, if a teacher edition is used in Utah public schools;

G. provide a map of the materials detailing when the materials should be used in a 180 day school schedule including the standard, objective and indicator of the item to be taught with corresponding page numbers; the recommended use of the material, such as to introduce a concept, to gain information about a concept, to extend understanding of a concept, to apply a concept, or to assess a concept; and hyperlinks to other materials, websites, or lesson plans that correspond to the concept.

H. designate at the conclusion of the alignment document, the reviewer's evaluation of the material's alignment to the Core curriculum on a scale of 1-10, with 10 indicating the closest alignment to the Utah Core curriculum; and

I. provide an assurance, including a personal (electronic is adequate) signature that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-11. Agreements and Procedures for Publishing Companies.

A. Beginning with the 2012-2013 school year, publishing companies desiring to sell primary instructional materials to Utah school districts and schools shall:

(1) contract with an independent party who meets the requirements in R277-469-9 to align and map the primary instructional material and related ancillary materials to the appropriate Utah Core with the following provisions:

(a) the publisher provides a detailed summary of the Core alignment and mapping as described in R277-469-10 at no charge; and

(b) the publisher pays the costs associated with the requirements of Section 53A-14-107.

(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).

B. Publishers seeking to sell recommended materials to Utah schools or school districts shall have adopted materials on deposit at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

C. Depository agreements may be made between publishers of materials and one or more depository.

D. The provisions of R277-469-11 shall not preclude publishers from selling instructional materials to schools or school districts in Utah directly or through means other than the designated depository.

E. Recommended materials with revisions:

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

(a) the original contract price and contract date do not

change and the original contract price applies for the substituted materials;

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

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

(d) the publisher submits a revised electronic edition in NIMAS file format to the National Instructional Materials Access Center (NIMAC) if the USOE approves the substitution request; and

(e) a new curriculum alignment and map summary is provided after the 2012-2013 school year.

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

F. A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.

R277-469-12. Request for Reconsideration of Recommendation.

A. A request for reconsideration is an additional opportunity provided to a school district, school or publisher for review of instructional materials when the school district, school or the publisher disagrees with the initial Commission recommendation.

B. The request for reconsideration procedure is as follows:

(1) A school district, school or publisher shall receive the evaluations and recommendations from the USOE of the initial review.

(2) A school district, school or publisher shall have 30 days to respond to the evaluation and request to have materials reviewed again during the next review cycle.

(3) During the period of the reconsideration request, materials shall be marked as tentative and shall not be given official status. These materials shall not be posted to the Internet site until recommended through the official Commission process.

(4) A school district, school or publisher may be asked to send a second set of sample materials to the USOE.

(5) Any written information provided by a school district, school or publisher shall be available to the advisory committees during the second review.

(6) After the second review by the subject area advisory committee, the advisory committee's recommendation shall be voted on by the Commission at the next scheduled meeting.

(7) If the Commission votes to change the recommendation, the Board shall consider the Commission's revised recommendation at the next scheduled Board meeting and make a final decision.

(8) A school district, school or publisher shall receive written notification that a recommendation is final and shall receive a copy of the new evaluation. Evaluations may now appear on the Internet if materials are recommended.

KEY: instructional materials

August 9, 2010	**Art X, Sec 3**
Notice of Continuation April 8, 2013	**53A-14-101**
	53A-14-107
	53A-1-401(3)

R277. Education, Administration.
R277-483. Persistently Dangerous Schools.
R277-483-1. Definitions.

A. "Adequate yearly progress" means a specific level of student achievement has been met by an individual school consistent with the requirements of the federal No Child Left Behind (NCLB) Act.

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

C. "Charged" means the accusation of a crime by a formal complaint, information, or indictment.

D. "Days" for purposes of this rule mean school days, unless otherwise specified.

E. "Expelled" for purposes of this rule means a denial of school services at the student's school of residence for at least 60 consecutive school days. Expulsion differs from suspension in that a suspension is a less drastic method of discipline and generally continues for a shorter period than expulsion. A student shall be expelled by the local school board consistent with Section 53A-11-903.

F. "Federal gun-free schools violation" means any violation involving a firearm as defined under U.S.C., Title 18, Section 921.

G. "Homebound/hospitalized services" means services provided by a school district to a student that include the following:

(1) a minimum of two instructional contact hours per week;

(2) documentation of that contact;

(3) justification of the services which may include specific injuries, surgery, illness, other disabilities, pregnancy, or a district determination that a student should receive home instruction and supervision for a designated period of time. The expected period of absence must be estimated.

H. "Parent" for purposes of this rule, means the custodial parent, court-appointed legal guardian, or district-appointed guardian.

I. "Persistently dangerous school" means a public K-12 school with any combination of grades and that meets the following criteria: The school has at least three percent of the student body, as determined by the October 1 count, that has been expelled, as defined by this rule, in each of three consecutive school years for:

(1) violent criminal offenses, as defined in this rule, that occurred on school property or at school sponsored activities; or

(2) federal gun free school violations.

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

K. "Victim" for purposes of this rule means the student who is the object of a violent criminal offense that occurs on the property of the school the student attends.

L. "Violent criminal offense" means actual or attempted criminal homicide under Section 76-5-201, rape under Section 76-5-402 through 76-5-402.3, aggravated sexual assault under 76-5-405, forceable sexual abuse under 76-5-404, aggravated sexual abuse of a child under 76-5-404.1, aggravated assault under 76-5-103 and robbery under 76-6-301. The offense shall be reported to law enforcement and charged as indicated to qualify for purposes of this rule. The list of violent criminal offenses identified in this definition shall be maintained by the USOE and be readily available to the U.S. Department of Education.

R277-483-2. 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 Title IX, Part E, Subpart 2, Section 9532, Unsafe School Choice Options, which requires a state receiving funds under this Act to establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary or secondary school, or who becomes a victim of a violent criminal offense while in or on the grounds of a public elementary or secondary school that the student attends, be allowed to attend a safe public elementary or secondary school within the school district, including a public charter school.

B. The purpose of this rule is to comply with federal law and to provide for student transfers, consistent with state law and local board policies, if students are residents of schools designated as persistently dangerous or victims of violent criminal offenses identified in R277-483-1L.

R277-483-3. Persistently Dangerous School Data Collection.

A. The USOE shall provide consistent definitions and forms for collection of data necessary to make designations under this rule.

B. The USOE shall use data to count violent criminal offenses, identified in R277-483-1L, collected annually in the Safe Schools Incident Report, received by the USOE by June 15 annually, and required by the Elementary and Secondary Education Act, Section 4122.

R277-483-4. Identification of Persistently Dangerous Schools.

A. A school that reports data showing three percent or more of its studentbody has been expelled for violent criminal offenses, as defined under R277-483-1H and federal gun-free schools violations, as defined under R277-483-1E, shall be required to provide data to the USOE for the previous two school years documenting the number and type of student expulsions. If the documentation shows that more than three percent of the school's studentbody for both years in question was expelled for offenses designated in R277-483-1E or R277-483-1H or both, the school shall be designated a persistently dangerous school for the upcoming school year under this rule.

B. Following review of data collected under R277-483-3 and application of the criteria of this rule, the USOE shall recommend to the Board a list of persistently dangerous schools no later than July 1 of each school year.

C. The Board shall review the list of recommended persistently dangerous schools. The board shall designate persistently dangerous schools at a regular open Board meeting in July or August of each year.

D. A school, working with the local board, shall be removed by the Board from the list on an annual basis if:

(1) the school provides evidence and information to the Board's satisfaction that proves that the school no longer meets the qualifying criteria of this rule and

(2) the school presents evidence to the Board of regular and consistent training of students, staff, and community about school safety, harassment, bullying, and problem solving.

R277-483-5. Parental Notification.

If a school is designated by the Board as persistently dangerous, parents of all students attending the school shall be notified by the local board of available transfer schools in a reasonable manner by no later than August 15 of the school year of designation.

R277-483-6. Students' Right to Transfer to and Continued Attendance.

A. Parents receiving notification of persistently dangerous school status may choose to transfer and shall indicate desire to transfer and school of preference to the local board within 30 calendar days of the date of the notification letter. Schools or local school boards shall provide by written policy a window of at least 30 school days for student transfers. Students shall be assigned to a non-dangerous school within 30 days of written parent request for transfer.

B. Parents of students moving into a persistently dangerous school community following the transfer window shall be notified immediately of the school's persistently dangerous status and shall have 30 calendar days following registration to request transfer from the local board and indicate school preference. The local board shall have 30 calendar days to assign a school. Parents shall make a decision within 10 days following notification to accept the school assignment as offered by the local board or have their children remain in the resident school.

C. The local board shall designate available transfer schools within the district. The local board shall develop criteria for transfer schools and shall not designate other persistently dangerous schools or schools that failed to make adequate yearly progress (Section 1111 of the NCLB Act 1116 NCLB) as transfer schools.

D. Students attending alternative schools that have been designated as persistently dangerous shall be offered choices consistent with district policies for alternative school placement. If a local board determines that the only appropriate placement for a student is an alternative school, the local board shall offer homebound/hospitalized services, under R277-419, or other home or non-school based programs as an option to the alternative school.

E. Students who have been disciplined for any of the violations identified in this rule forfeit the right to transfer from a persistently dangerous school.

F. Students shall be eligible to participate in all extracurricular activities immediately in their new schools of residence if they transfer consistent with this rule.

G. A student shall have a right to continued attendance at a school selected under this rule or a local board may require, by local board policy, a student to return to the student's resident school upon change of school safety designation, under R277-483-5.

R277-483-7. Student Victims of School Safety Offenses.

A. Students who are victims of a violent criminal offense, as defined in R277-483-1J, and their parent(s)/guardian(s), shall receive notice of available non-dangerous schools in the district as soon as reasonably possible after the school's or district's official notification of the incident by law enforcement.

B. The local board shall make available a school within 15 days of parental notification or arrange for homebound/hospitalized services, under R277-419, within 15 days of parental notification. The transfer shall not result in loss of credit or reduction in grade of the victimized student as long as the parent and student cooperate fully in the transfer process.

R277-483-8. Corrective Action.

A. The Board may assist local boards to develop corrective action plans for schools designated as persistently dangerous.

B. Corrective action plans shall include such training as improving communication among schools, parents, local law enforcement; training about harassment and bullying for both school personnel and students; activities that address and increase student social competency; improved student supervision; and consistent enforcement of school discipline plans.

C. Local boards shall provide annual assurance to the Board that corrective action plans have been implemented in all designated persistently dangerous schools.

R277-483-9. Complaint and Appeal Procedure.

A. A designated standing committee of the Board shall be the appeals committee for schools designated as persistently dangerous.

(1) The designated standing committee of the Board shall establish procedures for the appeal process.

(2) Annually, the USOE shall notify local boards of proposed designation of persistently dangerous schools prior to presenting the list to the Board.

(3) The designated standing committee of the Board shall provide an opportunity to the local board to appeal the proposed designation. The Board shall receive the designated standing committee's designations prior to a final decision by the Board. Local boards may only appeal based on evidence of incomplete or inaccurate data.

B. Parent appeal process of decisions made by local boards under this rule:

(1) A local board shall develop a procedure or use an existing appeals procedure to address appeals of decisions made under this rule.

(2) A parent shall attempt to resolve a complaint involving the application of this rule at the school level, where the parent shall receive, upon request, a copy of this rule and the local board's policy for handling parental complaints.

(3) If a parent is not satisfied, the parent shall attempt to resolve the complaint with the local board or its designee.

R277-483-10. Miscellaneous Provisions.

A. The Board shall maintain a record of the data collected and used to identify persistently dangerous schools and other appropriate records in order to demonstrate compliance with the law.

B. School districts have no responsibility for transportation of students under this rule.

KEY: expelled, persistently dangerous schools, school choice
June 7, 2012 Art X Sec 3
Notice of Continuation April 8, 2013 53A-1-401(3)
Title IX, Part E, Subpart 2, Section 9532

R277. Education, Administration.
R277-485. Loss of Enrollment.
R277-485-1. Definitions.

A. "ADM" means average daily membership derived from end-of-year data.

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

C. "Carryforward balance" means the unspent amount of MSP Uniform School Fund monies from the previous fiscal year.

D. "Historical Mean ADM" means the mean of the two highest ADM in the three years preceding the prior year.

E. "Local Effort" means the prior year sum of tax rates imposed by the local school board.

F. "Lost ADM" means the difference between prior year ADM and Historical Mean ADM.

G. "Mid-year update" means the annual Minimum School Program allocation report prepared by the USOE and provided after January 1 annually.

H. "Minimum School Program (MSP)" means the state supported Minimum School Program as defined in 53A-17a.

I. "Weighted Pupil Unit (WPU)" means the unit of measure of factors that is computed in accordance with the MSP for the purpose of determining the costs of a program on a uniform basis for each district.

R277-485-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-139 which allows the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond its control.

B. The purpose of this rule is to compensate a school district financially for an excessive loss in student enrollment due to factors beyond its control.

R277-485-3. Eligibility.

A. A school district shall be eligible for funding if the district's lost ADM is at least four percent less than the district's historical mean ADM.

B. Charter schools are not eligible for funding under this rule.

R277-485-4. Funding.

A. The source of funding to the district shall be the current unencumbered MSP carryforward balance. This rule shall provide funds to school districts only after all other authorized uses of the carryforward balance have been carried out.

B. The total amount of funds made available for distribution shall be equal to the lesser of:

(1) the sum of lost ADM in eligible districts multiplied by 25 percent of the current year value of the WPU; or

(2) 25 percent of the current unencumbered MSP carryforward balance.

C. Available funds shall be distributed proportional to lost ADM (90 percent) and prior year local effort (10 percent) among eligible districts.

D. If there are not any current year unencumbered MSP funds, eligible districts shall not be funded.

R277-485-5. Implementation.

Funds shall be distributed annually in one lump sum with the mid-year update of the current year MSP.

KEY: student, enrollment
May 8, 2012 **Art X Sec 3**
Notice of Continuation April 8, 2013 **53A-17a-139**

R277. Education, Administration.
R277-498. Grant for Math Teaching Training.
R277-498-1. Definitions.

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

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator.

C. "Endorsements in mathematics" means one or more endorsements in the mathematics teaching field that qualify an educator or prospective educator to teach a specific or specific level of mathematics course. A notation indicating the educator's competency is maintained on the educator's CACTUS record.

D. "Matching funds" means funds provided by the grant recipient in order to receive state funds under Section 53A-6-901.

E. "Teaching license" or "educator license" means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools.

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

R277-498-2. 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 Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-6-901(2) that directs the Board to write rules to provide criteria to award grant(s) to a higher education institution(s) to encourage prospective educators to earn mathematics endorsements.

B. The purpose of this rule is to award funds, consistent with 2012 legislation, to institution(s) of higher education to support and encourage prospective educators to earn mathematics endorsements.

R277-498-3. Board/USOE Procedures for Distributing Funds.

A. The USOE shall identify one or more institutions of higher education that meets the criteria of Section 53A-6-901 and the criteria of this rule from requests submitted by interested institutions of higher education.

B. The USOE shall notify selected institutions of their eligibility to receive funds under this program following review of the request and the assurance of matching funds.

C. The USOE may identify one eligible and qualified institution of higher education and establish a funding schedule to distribute funds or allow institutions to submit applications until March 30, 2013.

D. The USOE, under the direction of the Board, shall distribute the appropriation provided for in Section 53A-6-901, Section 2 by June 30 2013.

R277-498-4. Criteria for Awarding Grants.

A. The USOE shall consider the amount or percent of matching funds that an institution of higher education shall offer.

B. The USOE shall determine that the institution of higher education requesting funds under Section 53A-6-901 shall use the funds for teachers and training consistent with Section 53A-6-901(1).

R277-498-5. Accountability and Documentation.

A. The USOE shall maintain records of the distribution of funds to institution(s) of higher education that made requests for funds provided under Section 53A-6-901 and R277-498.

B. The recipient of funds under Section 53A-6-901 shall maintain documentation of the matching funds offered by the institution that established the institution's eligibility.

C. Both the USOE and the eligible institution(s) shall maintain documentation of the number of prospective educators and the relevant training received from funding provided in Section 53A-6-901.

KEY: grants, educators, math teaching training
April 8, 2013 **Art X, Sec 3**
53A-1-401(3)
53A-6-901(2)

R277. Education, Administration.
R277-508. Employment of Substitute Teachers.
R277-508-1. Definitions.

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

B. "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.

C. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools.

D. "Substitute teacher" means an individual employed to take the place of a regular teacher temporarily absent.

E. "Temporarily absent" means a period not to exceed eight consecutive weeks.

R277-508-2. 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-1-402(1)(a) which directs the Board to make rules regarding the qualifications of educators and ancillary personnel providing direct student services, 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 eligibility requirements and employment procedures for substitute teachers.

R277-508-3. Duration of Teaching Assignment.

A substitute teacher may not serve in a teaching position for more than eight weeks in one academic year in either the same class or with the same group of students. Individuals serving in the same teaching position for longer than eight weeks shall hold an appropriate license or be replaced by a person with an appropriate license.

R277-508-4. Hiring Priorities and Eligibility.

A. The first priority in hiring substitute teachers shall be given to those who hold a valid license in the subject matter they will be teaching as a substitute. Second priority is to hire persons who have a valid license in a field commonly taught in public schools.

B. It is desirable that a substitute teacher hold a valid license or a college degree. A district shall evaluate persons hired as substitutes to ensure that they are capable of managing a class and carrying out the instructional program.

C. Persons seeking employment as a substitute teacher shall furnish evidence as requested from the hiring school district that they are physically and mentally fit to work.

D. School districts may not employ any individual as a substitute teacher whose license has been revoked or is currently suspended by the Board or whose license has been revoked or is currently suspended by another state. Individuals whose licenses have been reinstated may be considered for employment as substitute teachers.

R277-508-5. Employment Procedures.

A. School districts shall establish a policy for hiring substitute teachers. The policy shall include obtaining verification from CACTUS that an applicant's license has not been revoked or suspended.

B. School districts shall have a policy to evaluate substitute teachers including a salary schedule to pay substitutes according to their training, experience, and competency.

C. Regular teachers are required to have lesson plans immediately available for use by substitute teachers.

D. Student teachers may substitute in classes consistent with the instructions and policies from the higher education institution which the student attends.

E. Paraprofessionals and Aides may substitute in classes consistent with school district or school policy.

KEY: teachers, professional competency, school personnel
August 15, 2003 **Art X Sec 3**
Notice of Continuation April 8, 2013 **53A-1-402(1)(a)**
53A-1-401(3)

R277. Education, Administration.
R277-532. Local Board Policies for Evaluation of Non-Licensed Public Education Employees (Classified Employees).

April 8, 2013

Art X, Sec 3
53A-1-401(3)
53A-8a-301

R277-532-1. Definitions.

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

B. "Non-licensed public education employee" means a school district employee who is working for a public education employer in a position that does not require a Utah educator license. School districts typically refer to non-licensed public education employees as classified employees.

R277-532-2. 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 Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and by Section 53A-8a-301 which directs the Board to develop rules requiring that school districts evaluate non-licensed public education employees.

B. The purpose of this rule is to direct public school districts to adopt policies for the evaluation, dismissal and compensation of non-licensed public education employees that satisfy the minimum standards of Sections 53A-8a-301 and 302, 53A-8a-501 through 506, and 53A-8a-601. The school district evaluation policies for non-licensed public education employees shall be consistent with Section 53A-8a-301 and in place no later than the 2014-2015 school year.

R277-532-3. School District Policies.

A. School districts shall adopt policies for non-licensed public education employee evaluation and dismissal consistent with minimum standards of Sections 53A-8a-301 and 302 and 53A-8a-501 through 506 and due process and the termination of non-licensed public education employees consistent with Section 53a-8a-501 through 504.

B. School district non-licensed public education employee evaluation policies shall include the following components:

(1) the annual evaluation of non-licensed public education employees;

(2) the use of appropriate tools for non-licensed public education employee evaluations;

(3) non-licensed public education employee evaluation criteria tied to specific non-licensed job descriptions or assignments;

(4) the administration of the evaluation by the school principal, an appropriate administrator or the principal's or administrator's designee; and

(5) an appeals process that allows non-licensed public education employees to appeal procedural violations of the evaluation process.

C. School district evaluation policies for non-licensed public education employees may include additional components.

D. School district non-licensed public education employee termination policies shall be developed as directed in Section 53A-8a-501 through 506;

E. School district non-licensed public education employee termination policies shall be consistent with Sections 53A-8a-501 through 504 and may include other components as determined locally.

F. School district policies may exclude temporary or part-time non-licensed public education employees from performance evaluations.

G. School districts shall fully implement evaluation policies for non-licensed public education employees consistent with Section 53A-8a-601.

KEY: policies, evaluations, non-licensed public education employee

R277. Education, Administration.
R277-746. Driver Education Programs for Utah Schools.
R277-746-1. Definitions.

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

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

R277-746-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-13-201(4) which directs the Board to prescribe rules for driver education classes in the public schools and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for local school districts conducting automobile driver education.

R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Revised, August, 2011, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Utah State Office of Education, Revised, August, 2011, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

KEY: driver education
November 8, 2011 53A-13-201(4)
Notice of Continuation April 8, 2013 53A-1-401(3)

R277. Education, Administration.
R277-751. Special Education Extended School Year (ESY).
R277-751-1. Definitions.

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

B. "ESY" means extended school year.

C. "ESY program" means the individualized education program provided by the school to a student with a disability during the ESY.

D. "ESY services" means special education and related services that are provided to a student with a disability beyond the normal school year of the LEA, in accordance with the student's IEP, at no cost to the student's parents, and meet the standards of the USOE.

E. "FAPE" means a free appropriate public education which includes special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the standards of the USOE and Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3), include preschool, elementary school and secondary school education in Utah; and are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and Utah State Board of Education Special Education Rules.

F. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.

G. "IEP team" means a group of individuals that is responsible for developing, reviewing, and revising an IEP for a student with a disability.

H. "LEA" means a local education agency which includes school boards/public school districts, charter schools, and, for the purposes of this rule, the Utah Schools for the Deaf and the Blind.

I. "Procedural Safeguards" means the procedural rights designed to protect the rights of students with disabilities and their parents. Requirements are defined in IDEA and Utah State Board of Education Special Education Rules, and include the parent's right to participate in meetings, review educational records, request an independent educational evaluation, receive written prior notice of actions proposed or refused by the LEA, and consent to evaluations and special education services. Procedural Safeguards also describe dispute resolution options.

J. "Regression" means reversion to a lower level of functioning, evidenced by a decrease in the level of basic behavioral or academic patterns, or both, or skills, which occurs as a result of an interruption in educational programming. These behaviors or skills are specified on a student's current IEP.

K. "Recoupment" means recovery of basic behavioral or academic patterns, or both, or skills, specified on the IEP, to a level demonstrated prior to the interruption of educational programming.

L. "Student with a disability" means a student who meets eligibility criteria for special education and related services, as defined in the Utah State Board of Education Special Education Rules.

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

R277-751-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(c) which directs the Board to adopt rules regarding services to students with disabilities and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the standards for the special education ESY.

R277-751-3. Determining Eligibility.

A. Students eligible for ESY services are:

(1) students who have been determined as eligible under Utah State Board of Education Special Education Rules and Part B of the IDEA; and

(2) students whose IEP team has determined, based upon a review of multiple data sources and factors, on an individual basis, an ESY is required to receive FAPE.

B. The student's IEP shall reflect the IEP team's decision regarding need for ESY services.

(1) Parents shall be provided with written prior notice of proposal or refusal to provide ESY services.

(2) If determined as eligible for ESY services, the IEP team shall determine the appropriate ESY program, based on the student's individual needs.

(3) ESY eligibility decisions and written prior notice of ESY programs shall be provided to parents in sufficient time to permit accessing dispute resolution options of the Procedural Safeguards, in the event of a dispute.

R277-751-4. ESY Program Standards.

A. The primary goal for a student requiring ESY services is to maintain the current level of the student's academic and functional skills and behavior in areas identified by the student's IEP in order to provide FAPE.

B. LEAs may not:

(1) limit ESY to particular categories of disabilities or particular ages or grade levels of students.

(2) unilaterally limit the type, amount, or duration of ESY services provided for students.

(3) limit data consideration by IEP teams to only an analysis of regression and recoupment.

C. LEAs shall ensure that:

(1) ESY student programs are provided in the least restrictive environment.

(2) ESY teachers and paraprofessionals meet IDEA's highly qualified requirements.

R277-751-5. Division of Responsibilities.

A. The duties of the Utah State Office of Education shall include:

(1) monitoring ESY compliance through:

(a) LEA program administrative reviews, such as Utah Program Improvement Planning System (UPIPS) monitoring;

(b) requiring student attendance and membership accountability.

(2) providing technical assistance to LEAs;

(3) collecting data on:

(a) the number, disabilities, and levels of students served;

(b) the types of program delivery models used;

(c) costs of the ESY program in LEAs;

(d) program effectiveness.

(4) developing guidelines for LEAs.

B. The duties of LEAs shall include:

(1) establishing LEA procedures which are in accordance with Board rules;

(2) providing professional development and on-site visits to assure that Board and LEA procedures are appropriately understood and implemented;

(3) establishing timelines to accomplish the purposes of this rule;

(4) analyzing LEA needs, reported by professionals, for ESY services for individual, eligible students;

(5) determining LEA ESY program parameters based upon data received from educators on individual, eligible students. The parameters shall include the personnel required to provide special education and related services, location of services, and budget specifications;

(6) ensuring parents and professionals have received

information about dispute resolution procedures for the appeal of ESY eligibility decisions and ESY program parameters;

(7) implementing processes to collect program effectiveness data.

KEY: exceptional children, extended school year

February 7, 2012	**Art X Sec 3**
Notice of Continuation April 8, 2013	**53A-1-402(1)(c)**
	53A-1-401(3)
	53A-17a-112(3)

R280. Education, Rehabilitation.
R280-200. Rehabilitation.
R280-200-1. Authority and Purpose.

A. This rule is authorized by Section 53A-24-105 which permits the Utah State Board of Education to administer funds made available for vocational rehabilitation and independent living.

B. The purpose of this rule is to establish the standards and procedures for the Utah State Office of Rehabilitation.

R280-200-2. Standards and Procedures for Vocational Rehabilitation.

A. The Utah State Board of Education adopts and incorporates by reference within this rule the standards and procedures of: the Rehabilitation Act of 1973, P.L. 102-569 (amended in 1992).

B. In addition, the Utah State Board of Education shall conduct the Rehabilitation Program consistent with:

(1) All state plans which are required and submitted under P.L. 102-569, including those for Vocational Rehabilitation, Title VI C, and Independent Living Rehabilitation Services and

(2) The Case Service Manual for the Vocational Rehabilitation Program, developed by the Utah State Office of Rehabilitation, 1998, available from the Utah State Office of Rehabilitation and from vocational rehabilitation counselors employed by the Utah State Office of Rehabilitation.

KEY: vocational education, rehabilitation
September 16, 1997 53A-24-105
Notice of Continuation April 8, 2013

R307. Environmental Quality, Air Quality.
R307-208. Outdoor Wood Boilers.
R307-208-1. Definitions.

The following additional definitions apply to R307-208:

"Clean wood" means wood that has not been painted, stained, or treated with any coatings, glues or preservatives, including, but not limited to, chromated copper arsenate, creosote, alkaline copper quaternary, copper azole or pentachlorophenol.

"Commercial new outdoor wood boiler" means a new outdoor wood boiler with a thermal output rating greater than 350,000 BTU per hour.

"Outdoor wood boiler" means a fuel burning device also known as a wood-fired hydronic heater:

(1) Designed to burn wood or other approved solid fuels;

(2) Specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans; and

(3) Designated to heat building space or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a mixture of water and antifreeze.

"New outdoor wood boiler" means an outdoor wood boiler that commences operation on or after March 1, 2013.

"Sole source of heat" means the solid fuel burning device is the only available source of heat for the entire residence or business, except for small portable heaters.

"Residential new outdoor wood boiler" means a new outdoor wood boiler that has a thermal output rating of 250,000 BTU per hour or less.

"Unseasoned wood" means wood that has not been allowed to dry for at least six months.

"Wood pellet outdoor boiler" means an outdoor wood boiler with an automatic pellet feed mechanism.

R307-208-2. Prohibition.

(1) Prohibited fuels. No person shall burn any of the following items in an outdoor wood boiler:

(a) Wood that does not meet the definition of clean wood;
(b) Unseasoned wood;
(c) Garbage;
(d) Tires;
(e) Yard waste, including lawn clippings;
(f) Materials containing plastic;
(g) Materials containing rubber;
(h) Waste petroleum products;
(i) Paints or paint thinners;
(j) Household or laboratory chemicals;
(k) Coal;
(l) Glossy or colored paper;
(m) Construction and demolition debris;
(n) Plywood;
(o) Particleboard;
(p) Fiberboard;
(q) Oriented strand board;
(r) Manure;
(s) Animal carcasses;
(t) Asphalt products;

(2) No person shall operate an outdoor wood boiler within 1000 feet of a private or public school, hospital or day care facility.

(3) Setback. A new residential outdoor wood boiler shall not be located less than 100 feet from the nearest property boundary line. A new commercial outdoor wood boiler shall not be located less than 200 feet from the nearest property boundary nor 300 feet from a property boundary of a residentially zoned property.

(4) Stack height. A new outdoor wood boiler shall have a permanent stack extending five feet higher than the peak of any roof structure within 150 feet of the outdoor wood boiler.

(5) In areas other than those described in R307-208-5(1), no person shall sell, offer for sale, supply, install, purchase, or transfer an outdoor wood boiler after May 1, 2013, unless it is EPA Phase 2 qualified wood boiler or EPA Phase 2 qualified wood pellet outdoor boiler.

R307-208-3. Visible Emission Standard.

(1) Visible emissions for all outdoor wood boilers shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(a) An initial fifteen minute start-up period; and

(b) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

R307-208-4. New Boiler Labeling.

(1) A permanent label shall be affixed to all new outdoor wood boilers by the manufacturer.

(a) The label material shall be durable to last the lifetime of the new unit.

(b) The label shall be affixed so that it cannot be removed.

(c) The label shall be affixed so that it is readily visible.

(d) The following information shall be displayed on the label:

(i) Date of manufacture;
(ii) Model name or number;
(iii) Serial number;
(iv) Thermal output rating in BTU per hour; and
(v) Particulate emission rate in pounds per million BTU heat output.

R307-208-5. Particulate Matter Nonattainment and Maintenance Plan Areas.

(1) R307-208-5 applies in all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) No person shall sell, install or resell an outdoor wood boiler commencing May 1, 2013, with the exception of persons who register an outdoor wood boiler under R307-208-5(3).

(3) Owners of an existing outdoor wood boiler wishing to replace it after May 1, 2013, shall:

(a) Register the existing outdoor wood boiler with the director by May 1, 2013;

(b) Replace the existing outdoor wood boiler with an EPA Phase 2 qualified wood pellet outdoor wood boiler; and

(c) Comply with the provisions of R307-208-2 and 3.

(4) Persons unable to meet setback requirements in R307-208-2(3) because of existing land use limitations must request a waiver from the director before installing an outdoor wood boiler. Such waiver must include written approval from surrounding neighbors within the setback areas described in R307-208-2(3).

R307-208-6. Air Quality Action and Alert Days.

(1) By August 1, 2013, sole sources of residential or commercial heating using an outdoor wood boiler must be registered with the director in order to be exempt from R307-208-6(2).

(2) No person shall operate an outdoor wood boiler on an air quality action or alert day as described in R307-302, except those that are registered with the director as sole source of heat.

KEY: air pollution, outdoor wood boilers, prohibition
April 10, 2013 19-2-101

19-2-104

R307. Environmental Quality, Air Quality.
R307-303. Commercial Cooking.
R307-303-1. Purpose.

The purpose of this rule is to reduce volatile organic compound (VOC) and PM2.5 emissions from commercial cooking equipment.

R307-303-2. Applicability.

R307-303 shall apply to Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

R307-303-3. Definitions.

"Catalytic oxidizer" means an emission control device that employs a catalyst fixed onto a substrate to oxidize air contaminants in an exhaust stream.

"Chain-driven charbroiler" means a semi-enclosed charbroiler designed to mechanically move food on a grated grill through the broiler.

"Charbroiler" means a cooking device composed of a grated grill and a heat source, where food resting on the grated grill cooks as the food receives direct heat from the heat source or a radiant surface.

R307-303-4. Performance Standards and Recordkeeping.

(1) No later than September 1, 2013, owners or operators of all chain-driven charbroilers in food service establishments shall install, maintain and operate a catalytic oxidizer.

(2) Any emission control device installed and operated under this rule shall be operated, cleaned, and maintained in accordance with the manufacturer's specifications. Manufacturer specifications for all emission controls must be maintained onsite.

(3) The owner or operator shall maintain on the premises of the food service establishment records of each of the following:

(a) The date of installation of the emission control device;

(b) When applicable, the date of the catalyst replacement; and

(c) For a minimum of five years, the date, time, and a brief description of all maintenance performed on the emission control device, including, but not limited to, preventative maintenance, breakdown repair, and cleaning.

(4) Opacity of exhaust stream shall not exceed 20% opacity using EPA Method 9.

KEY: commercial cooking, charbroilers, PM2.5, VOC
April 10, 2013 19-2-101

R307. Environmental Quality, Air Quality.
R307-343. Emissions Standards for Wood Furniture Manufacturing Operations.
R307-343-1. Purpose.

The purpose of R307-343 is to limit volatile organic compound (VOC) emissions from wood furniture manufacturing.

R307-343-2. Applicability.

R307-343 applies to wood furniture manufacturing operations, including related cleaning activities, that have the potential to emit 2.7 tons or more per year of VOCs and that are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele, and Weber counties.

R307-343-3. Definitions.

The following additional definitions apply to R307-343:

"Affected source" means a wood furniture manufacturing source that meets the criteria in R307-343-2.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.

"Compliant coating" means a finishing material or strippable booth coating that meets the emission limits specified in R307-343-4(1).

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Conventional Air Spray" means a spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than ten pounds per square inch (gauge) at the point of atomization. Airless, air assisted airless spray technologies, and electrostatic spray technology are not considered conventional air spray.

"Finishing material" means a coating used in the wood furniture industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Finishing Operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Stain" means any color coat having a solids content by weight of no more than 8.0% that is applied in single or multiple coats directly to the substrate, including nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

"Touch-up and Repair" means the application of finishing materials to cover minor finishing imperfections.

"Washcoat" means a transparent special purpose coating having a solids content by weight of 12.0% or less that is applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

"Washoff operations" means those operations in which organic solvent is used to remove coating from a substrate.

"Wood furniture" means any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712.

"Wood furniture manufacturing operations" means the finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

R307-343-4. Emission Standards.

(1) Each affected source subject to R307-343 shall limit VOC emissions by:

(a) Using the compliant coating method as described in R307-343-4(1)(a)(i) or using the control system method as described in R307-343-4(1)(a)(ii).

(i) Compliant coating method is the use of the topcoats or topcoat/sealer combinations in Table 1:

TABLE 1

Compliant Coating VOC Limitations
(values in pounds VOC per pound of solids, minus water and exempt solvents (compounds not classified as VOC), as applied)

COATING CATEGORY	VOC Content Limitations	
	Effective Through December 31,2014	Effective Beginning January 1, 2015
Topcoats	0.8	0.4
Topcoat/Sealer combination		
Topcoat	1.8	0.9
Sealer	1.9	0.9
Acid-cured, alkyd amino topcoat/sealer combinations		
Acid-cured,alkyd amino topcoat	2.0	1.0
Acid-cured,alkyd amino vinyl Sealer	2.3	1.2

(ii) Control system method is the use of a VOC control system achieving a 90% or greater emissions reduction.

(b) Using strippable spray booth coatings that contain no greater than 0.8 pounds VOC per pound solids as applied.

(c) Using closed containers for the storing of finishing, gluing, cleaning and washoff materials.

R307-343-5. Application Equipment Requirements.

(1) All coatings shall be applied using equipment having a minimum 65% transfer efficiency, except as allowed under R307-343-5(3) and operated according to the equipment manufacturer specifications. Equipment meeting the transfer efficiency requirement includes:

(a) Brush, dip, or roll coating;

(b) Electrostatic application; and

(c) High volume, low pressure (HVLP) spray equipment.

(2) Other coating application methods that achieve transfer efficiency equivalent to HVLP or electrostatic spray application methods may be used.

(3) Conventional air spray methods may be used under the following circumstances:

(a) To apply finishing materials that have no greater than 1.0 pound of VOC per pound of solids, as applied;

(b) For touch-up and repair under the following circumstances:

(i) The touchup and repair occurs after completion of the finishing operation; or

(ii) The touchup and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touchup and repair are applied from a container that has a volume of no more than 2.0 gallons;

(c) When the spray gun is aimed and triggered automatically, not manually;

(d) When the emissions from the finishing application station are directed to a control device;

(e) When the conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is no more than 10% of the total gallons of finishing material used during the calendar year; or

(f) When the conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

R307-343-6. Control Systems Operations.

(1) Emission control systems shall be operated and maintained in accordance with the manufacturer recommendations in order to maintain 90% or greater continuous emission reduction.

(2) The owner or operator of a control device shall provide documentation that the emission control system will attain the requirements of R307-343-4 and R307-343-5.

(3) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-343-7. Work Practices and Recordkeeping.

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions from fugitive type sources. Control techniques and work practices shall include:

(a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers or pipes.

(2) The work practices for cleaning materials shall be implemented at all times to reduce VOC emissions from fugitive type sources. The work practices shall include:

(a) Storing all VOC-containing cleaning materials and used shop towels in closed containers;

(b) Ensuring that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing cleaning materials;

(d) Conveying VOC-containing cleaning materials from one location to another in closed containers or pipes; and

(e) Minimizing VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) All persons shall perform solvent cleaning operations with cleaning material having VOC content of 0.21 pounds per gallon or less.

(4) For each calendar year, all sources subject to R307-343 shall maintain records demonstrating compliance with all provisions of R307-343.

(a) Records shall include, but shall not be limited to, inventory and product data sheets for all coatings and solvents subject to R307-343.

(b) These records shall be made available to the director upon request.

R307-343-8. Compliance Schedule.

(1) Sources in Salt Lake and Davis counties that have the potential to emit between 2.7 and 24 tons of VOC per year shall be in compliance by September 1, 2013.

(2) Sources in Salt Lake and Davis counties that have the potential to emit 25 tons or more of VOC per year shall be in compliance upon the effective date of this rule.

(3) All sources in Box Elder, Cache, Tooele, Utah and Weber counties shall be in compliance with this rule by January 1, 2014.

KEY: air pollution, wood furniture, coatings
May 1, 2013 19-2-104(1)(a)
Notice of Continuation February 1, 2012 19-2-104(3)(e)

R307. Environmental Quality, Air Quality.
R307-353. Plastic Parts Coatings.
R307-353-1. Purpose.

The purpose of this rule is to limit volatile organic compound (VOC) emissions from the application of coatings to any plastic product.

R307-353-2. Applicability.

(1) R307-353 applies to plastic parts coating operations located in Cache, Davis, Salt Lake, Utah and Weber counties that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(2) In Box Elder and Tooele counties, R307-353 applies to the following sources:

(a) Existing sources as of May 1, 2013 with the potential to emit 5 tons per year or more of VOC, including related cleaning activities; and

(b) New sources as of May 1, 2013 that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

R307-353-3. Exemptions.

(1) The provisions of this rule shall not apply to any of the following:

(a) Stencil coatings;

(b) Safety-indicating coatings;

(c) Electric-insulating and thermal-conducting coatings;

(d) Magnetic data storage disk coatings;

(e) Plastic extruded onto metal parts to form a coating; and

(f) Textured finishes.

(2) If a coating line is subject to the requirements for existing automobile, light-duty truck, and other product and material coatings or for existing metallic surface coating lines, the coating line shall be exempt from this rule.

R307-353-4. Definitions.

The following additional definitions apply to R307-353:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

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

"Electric-insulating and thermal-conducting" means a coating that displays an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating as applied.

"Military specification coating" means a coating which has a formulation approved by a United States military agency for use on military equipment.

"Mirror backing" means the coating applied over the silvered surface of a mirror.

"Mold-seal coating" means the initial coating applied to a new mold or a repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-colored coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to from an acceptable dry film. A thinner necessary to reduce the viscosity is not considered a component.

"Optical coating" means a coating applied to an optical lens.

"Plastic" means a substrate containing one or more resigns that may be solid, porous, flexible, or rigid, and includes fiber reinforced plastic composites.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Roller Coated" means a type of coating application equipment that utilizes a series of mechanical rollers to form a thin coating film on the surface of a roller, which is then applied to a substrate by moving the substrate underneath the roller.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

R307-353-5. Emission Standards.

(1) For automobile and truck plastic parts coating lines:

(a) Each owner or operator shall not apply coatings with a VOC content in excess of the amounts specified in Table 1 or shall use an add-on control device as specified in R307-353-8.

(b) For red and black coatings, the emission limitation shall be determined by multiplying the appropriate limit in Table 1 by 1.15.

(c) When EPA Method 24 is used to determine the VOC content of a high bake coating, the applicable emission limitation shall be determined by adding 0.5 to the appropriate limit in Table 1.

(d) When EPA Method 24 is used to determine the VOC content of an air-dried coating, the applicable emission limitation shall be determined by adding 0.1 to the appropriate limit in Table 1.

TABLE 1

AUTOMOBILE AND TRUCK PLASTIC PARTS COATING LINES
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC), as applied)

COATING CATEGORY	VOC Content Limitations
High bake coating - exterior and interior parts	
Prime	
Flexible coating	4.5
Nonflexible coating	3.5
Topcoat	
Basecoat	4.3

Clearcoat	4.0
Non-basecoat/clearcoat	4.3
Air-dried coating - exterior parts	
Prime	4.8
Topcoat	
Basecoat	5.0
Clearcoat	4.5
Non-basecoat/clearcoat	5.0
Air-dried coating - interior parts	5.0
Touch-up and repair	5.2

(2) Each owner or operator of a business machine plastic parts coating line shall not apply coatings with a VOC content in excess of the amounts specified in Table 2 or shall use an add-on control device as specified in R307-353-8.

TABLE 2

BUSINESS MACHINE PLASTIC PARTS COATING LINES
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC)), as applied)

COATING CATEGORY	VOC Content Limitations
Prime	2.9
Topcoat	2.9
Texture coat	2.9
Fog coat	2.2
Touch-up and repair	2.9

(3) Each owner or operator engaged in other plastic product coating operations shall not apply coatings with a VOC content in excess of the amounts specified in Table 3 or shall use an add-on control device as specified in R307-353-8.

TABLE 3

OTHER PLASTIC PRODUCT COATING CATEGORIES
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC), as applied)

COATING CATEGORY	VOC Content Limitations
General One-Component	2.3
General Multi-Component	3.5
Electric Dissipating Coatings And Shock-Free Coatings	3.0
Extreme Performance	3.5 (2-pack coatings)
Metallic	3.5
Military Specification	2.8 (1 pack) 3.5 (2 pack)
Mold-Seal	6.3
Multi-colored Coatings	5.7
Optical Coatings	6.7
Vacuum-Metalizing	6.7
Mirror Backing	
Curtain Coated	4.2
Roll Coated	3.6

(4) If a part consists of both plastic and metal surfaces and is exempted from the requirements for existing metallic surface coating lines, the part shall be subject to this rule.

R307-353-6.Application Methods.

No person shall apply VOC containing coatings unless the coating is applied with equipment operated according to the manufacturer specifications, and by use of one of the following methods:

(1) Electrostatic application;
(2) Flow coat;
(3) Roller coat;
(4) Dip/electrodeposition coat;
(5) Airless Spray;
(6) High-volume, low-pressure (HVLP) spray; or
(7) Other application method equal to or better than HVLP, as certified by the manufacturer.

R307-353-7. Work Practices and Recordkeeping.

(1) The owner or operator shall:
(a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
(b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
(c) Clean up spills immediately;
(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
(2) All persons shall perform solvent cleaning operations with cleaning material having VOC content of 0.21 pounds per gallon or less.
(3) All sources subject to R307-353 shall maintain records demonstrating compliance with all provisions of R307-353 on an annual basis.
(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.
(b) These records shall be made available to the director upon request.

R307-353-8. Optional Add-On Controls.

(1) The owner or operator may install and maintain an incinerator, carbon adsorption, or any other add-on emission control device, provided that the emission control device will achieve at least a 90% or greater emission reduction.
(2) The owner or operator of a control device shall provide documentation that the emission control system will attain the requirements of R307-353-8(1).
(3) Emission control systems shall be operated and maintained in accordance with the manufacturer recommendations. The owner or operator shall maintain for a minimum of two years records of operations and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

R307-353-9. Compliance Schedule.

All sources within Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties shall be in compliance with this rule by January 1, 2014.

KEY: air pollution, emission controls, coatings, plastic parts
May 1, 2013 19-2-104(1)(a)

R311. Environmental Quality, Environmental Response and Remediation.
R311-200. Underground Storage Tanks: Definitions.
R311-200-1. Definitions.

(a) Refer to Section 19-6-402 for definitions not found in this rule.

(b) For purposes of underground storage tank rules:

(1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

(2) "Alternative Fuel" means a petroleum-based fuel containing:

(A) more than ten percent ethanol, or

(B) more than twenty percent biodiesel.

(3) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".

(4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.

(5) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.

(6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.

(7) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.

(8) "Certificate" means a document that evidences certification.

(9) "Certification" means approval by the Director or the Board to engage in the activity applied for by the individual.

(10) "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).

(11) "Change-in-service" means the continued use of an UST to store a non-regulated substance.

(12) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.

(13) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.

(14) "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).

(15) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(16) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Director following the criteria in R311-211.

(17) "Department" means the Utah Department of Environmental Quality.

(18) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

(19) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(20) "EPA" means the United States Environmental Protection Agency.

(21) "Expeditiously disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Director.

(22) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(23) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(24) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(25) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(26) "Injury or Damages from a Release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in R311-211-6(a).

(27) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Director.

(28) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(29) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(30) "No Further Action determination" means that the Director has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(31) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(32) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(33) "Owners and operators" means either an owner or operator, or both owner and operator.

(34) "Overexcavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(35) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Section R311-202.

(36) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(37) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(38) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(39) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(40) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(41) "Registration fee" means underground storage tank registration fee.

(42) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(43) "Secondary Containment" means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(44) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(45) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(46) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(47) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(48) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Director.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Director.

(49) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(50) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(51) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(52) "Third-party Class B operator" is any individual who is not the facility owner/operator or an employee of the owner/operator and who, by contract, provides the services outlined in R311-201-12(e).

(53) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.

(54) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(55) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(56) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(57) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(58) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2)(c).

(59) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;

(E) secondary containment construction; and

(F) UST repair and service.

(60) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(61) "UST installer" means an individual who engages in underground storage tank installation.

(62) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(63) "UST remover" means an individual who engages in underground storage tank removal.

(64) "UST tester" means an individual who engages in UST testing.

(65) "UST testing" means a testing method which can detect leaks in an underground storage tank system, or testing for compliance with corrosion protection requirements. Testing methods must meet applicable performance standards of 40 CFR 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing, 280.44(a) for automatic line leak detector testing, and 280.31(b) for cathodic protection testing.

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R311. Environmental Quality, Environmental Response and Remediation.
R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.
R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Certification Requirement.

(a) Certified UST Consultant. After December 31, 1995, no person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Director shall contain the Certified UST Consultant's signature. After December 31, 1995, any release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Director.

(b) UST Inspector. After December 31, 1989, no person shall conduct underground storage tank inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct these activities.

(c) UST tester. After December 31, 1989, no person shall conduct UST testing without having certification to conduct such activities. After December 31, 1989, no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201. Certification by the Director under this Rule for tank, line and leak detector testing shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment or by training determined by the Director to be equivalent to the manufacturer training. The Director may issue a limited certification restricting the type of UST testing the applicant can perform.

(d) Groundwater and soil sampler. After December 31, 1989, no person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. After January 1, 1991, no person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Director may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. After January 1, 1991, no person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

R311-201-3. Application for Certification.

(a) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Director to demonstrate that the applicant

(1) meets applicable eligibility requirements specified in Subsection R311-201-4 and

(2) will maintain the applicable performance standards specified in Subsection R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Director for determination of eligibility for certification. If the Director determines that the applicant meets the applicable eligibility requirements described in Subsection R311-201-4 and meets the standards described in Subsection R311-201-6, the Director shall issue to the applicant a certificate.

(c) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to Subsection R311-201-5.

R311-201-4. Eligibility for Certification.

(a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Director to provide training to include the following areas: state and federal statutes, rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Director.

(3) Education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the Director;

(B) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act or equivalent certification as determined by the Director; or

(C) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the Director.

(4) Initial Certification Examination. Each applicant who is not certified pursuant to R311-201-3 must successfully pass an initial certification examination or equivalent administered under the direction of the Director. The Director shall

determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4(a)(1).

(5) Renewal Certification Examination. Certified UST Consultants seeking to renew their certification pursuant to R311-201-5 must successfully pass a renewal certification examination or equivalent administered under the direction of the Director. The Director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) Examination for Revoked or Expired Certification. Any applicant who is not a Certified UST Consultant on the date the renewal certification examination is given, because the consultant's prior UST Consultant certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under R311-201-4(a)(4).

(b) UST Inspector.

(1) Training. For initial certification, an applicant must have successfully completed an underground storage tank inspector training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: corrosion, geology, hydrology, tank handling, tank testing, product piping testing, disposal, safety, sampling methodology, state site inspection protocol, state and federal statutes, rules and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(b)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(c) UST Tester.

(1) Financial Assurance. An applicant or applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or $50,000, whichever is greater. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the certification application.

(2) Training.

(A) Tank and product piping tightness testing, and automatic line leak detector testing. For initial certification, an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that he will be using, or a training course determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. An applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that he will be using, or training as determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. For renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate. In addition, an applicant must complete underground storage tank testers training within the six month period prior to application in a program approved by the Director to provide training to include applicable and related areas of state and federal statutes, rules and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(B) Cathodic protection testing. For initial and renewal of certification, the applicant shall provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

(3) Performance Standards of Equipment. An applicant shall submit documentation that demonstrates the UST testing equipment used by the applicant meets performance standards of 40 CFR Part 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing. This documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the Director. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(d) Groundwater and soil sampler.

(1) Training. For initial certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined by the Director. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or $250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be

approved by the Director, and shall include instruction in the following areas: tank installation, preinstallation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or $250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank remover approved training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director and shall include instruction in the following areas: tank removal, tank removal safety practices, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(f)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-5. Renewal.

(a) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by:

(1) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in R311-201-4 and meets the applicable performance standards specified in R311-201-6;

(2) paying any applicable fees, and

(3) passing a certification renewal examination.

(b) If the Director determines that the applicant meets the applicable eligibility requirements of R311-201-4 and the applicable performance standards of R311-201-6, the Director shall reissue the certificate to the applicant.

(c) Renewal certificates shall be issued for a period equal to the initial certification period, and shall be subject to inactivation under R311-201-8 and revocation under R311-201-9.

(d) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under R311-201-4 for the applicable certificate before receiving the renewal certification, except as provided in R311-201-4(a)(6) for certified UST consultants.

R311-201-6. Standards of Performance.

(a) Certified UST Consultant. An individual who provides UST consulting services in the State of Utah:

(1) shall display the certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST release-related consulting in this state;

(3) shall provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(4) shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(5) shall perform work and submit documentation in a timely manner;

(6) shall review and certify by signature any documentation submitted to the Director in accordance with UST release-related compliance;

(7) shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;

(8) shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah underground storage tank rules, or report the results indicating that a release may have occurred, to the local health district, local public safety office and the Director within twenty-four hours;

(9) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(10) shall not participate in any other activities regulated under Rule R311-201 without meeting all requirements of that certification program.

(b) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank inspecting in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing tank inspecting to the local health district, local public safety office and the Director within twenty-four hours;

(4) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Director.

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(7) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(c) UST Tester. An individual who performs UST testing in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST testing in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank testing to the local health district, local public safety office and the Director within twenty-four hours;

(5) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release or suspected release from an underground storage tank or which would falsify UST testing results of the underground storage tank system;

(8) shall perform work in a manner that the integrity of the underground storage tank system is maintained; and,

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(d) Groundwater and soil sampler. An individual who performs environmental sampling for compliance with Utah underground storage tank rules:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank sampling in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing groundwater or soil sampling or report the results indicating that a release may have occurred to the local health district, local public safety office and the Director within twenty-four hours;

(4) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(6) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(e) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank installation in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank installation to the local health district, local public safety office and the Director within twenty-four hours;

(5) shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment which includes preinstallation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and

(8) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(9) shall notify the Director as required by R311-203-3(a) before installing or upgrading an UST.

(f) UST Remover. An individual who performs underground storage tank removal in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws and regulations regarding underground storage tank removal in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank removal to the local health district, local public safety office and the Director within twenty-four hours;

(5) shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person;

(6) shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b);

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(8) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program, except as outlined in Subsection R311-204-5(b).

R311-201-7. Denial of Certification and Appeal of Denial.

Any individual whose application or renewal application for certification or certification renewal is denied shall be provided with a written documentation by the Director specifying the reason or reasons for denial. An applicant may appeal that determination to the Solid and Hazardous Waste Control Board using the procedures specified in Section 63G-4-102, et seq., and Rule R311-210.

R311-201-8. Inactivation of Certification.

If an applicant was certified based upon his employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer. If the employer loses his financial assurance or the applicant leaves the employer, his certificate shall automatically be deemed inactive and he shall no longer be certified for purposes of this Rule. Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees. Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

R311-201-9. Revocation of Certification.

Upon receipt of evidence that a certificate holder does not

meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked. Procedures for revocation are specified in Rule R305-6.

R311-201-10. Reciprocity.

If the Director determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Section R311-201-3(c), as appropriate, whichever is first.

R311-201-12. UST Operator Training and Registration.

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall, by January 1, 2012, have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Director to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) After January 1, 2012, new Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(d)(2). The Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

(1) The Class A operator shall:

(A) have a general knowledge of UST systems;

(B) ensure that UST records are properly maintained according to 40 CFR 280;

(C) ensure that yearly UST fees are paid;

(D) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;

(E) make financial responsibility documents available to the Director as required; and

(F) ensure that Class B and Class C operators are trained and registered.

(2) An owner or operator may designate a third-party Class B operator as a Class A operator if:

(A) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;

(B) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(C) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Subsection R311-201-12(h);

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored every seven days for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overfill prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(f) After January 1, 2012, any individual providing services as a third-party Class B operator shall be trained and registered in accordance with Subsection R311-201-12(j) and shall:

(1) be a current certified UST installer as either a general installer or service/repair technician, or

(2) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of $250,000 minimum per occurrence.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) UST Operator Inspections.

(1) Each UST facility shall have an on-site operator inspection conducted every 30 days, or as approved under Subsection R311-201-12(h)(4) or (5). The inspection shall be performed by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Director.

(2) The UST operator inspection shall document that:

(A) release detection systems are properly operating and maintained;

(B) spill, overfill, vapor recovery, and corrosion protection systems are in place and operational;

(C) tank top manways, tank and dispenser sumps, secondary containment sumps, and under-dispenser containment are intact, and are properly maintained to be free of water, product, and debris;

(D) alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases according to 40 CFR 280.50 or documented to show that no release has occurred; and

(E) unusual operating conditions and other indications of a release or suspected release indicated in 40 CFR 280.50 are properly reported.

(3) The individual conducting the inspection shall use the form "UST Operator Inspection- Utah" to conduct on-site operator inspections. The form, dated April 30, 2009, and including information required to be completed during the inspection, is hereby incorporated by reference.

(4) The Director may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.

(5) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an operator inspection every 90 days.

(i) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device, if the facility dispenses fuel.

(j) Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Director, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Director. The Director shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(j)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Director, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Director. The Director shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Director, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(i) submitting a completed application form;

(ii) paying any applicable fees; and

(iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Director determines that the operator meets all the requirements for registration, the Director shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility; or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h); or

(C) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Director.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Director within 30 days of the re-training. If the documentation is not received, the Director may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(5) If the documentation of re-training is not received by the Director within six months of the date of determination of non-compliance, the Class A or B operator's registration shall lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(j)(1) and (2).

(6) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(k)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(k)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(l) Reciprocity.

(1) If the Director determines that another state's operator training program is equivalent to the operator training program

provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(j)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(j)(2)(D).

KEY: hazardous substances, administrative proceedings, underground storage tanks, revocation procedures

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Notice of Continuation April 10, 2012 19-6-105

19-6-402

19-6-403

63G-4-102

63G-4-201 through 205

63G-4-503

R311. Environmental Quality, Environmental Response and Remediation.
R311-203. Underground Storage Tanks: Technical Standards.
R311-203-1. Definitions.

Definitions are found in Rule R311-200.

R311-203-2. Notification.

(a) The owner or operator of an underground storage tank shall notify the Director whenever:

(1) new USTs are brought into use;

(2) the owner or operator changes;

(3) changes are made to the tank or piping system;

(4) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed or upgraded, and

(5) whenever an alternative fuel is stored in the tank.

(b) All notifications shall be submitted on the current approved notification form.

(1) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted within 30 days of the completion of the work or the change of ownership.

(2) Notifications submitted to meet the requirement of R311-203-2(a)(5) shall be submitted at least 10 days, or another time period approved by the Director, prior to storing an alternative fuel in the tank.

(c) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:

(1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(2) provide separate notification to the Director within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

(a) Certified UST installers shall notify the Director at least 10 days, or another time period approved by the Director, before commencing any of the following activities:

(1) the installation of a full UST system or tank only;

(2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;

(3) the internal lining of a previously-existing tank;

(4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility where the structural integrity of the UST was required to be assessed, or where there is no documentation of a properly-working cathodic protection system on the UST within 10 years of the proposed upgrade;

(5) the installation of a bladder in a tank;

(6) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;

(7) the installation of a spill prevention or overfill prevention device;

(8) the installation of a leak detection monitoring system; and

(9) the installation of a containment sump or under-dispenser containment.

(b) The UST installation company shall submit to the Director an UST installation permit fee of $200 when any of the activities listed in R311-203-3(a)(1) through (6) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(c) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.

(d) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(c), an installation shall be considered complete when:

(1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(2) in the case of installation of the components listed in Subsections R311-203-3(a)(3) through (a)(6), the new installation is functional and the UST holds a regulated substance and is operational.

(e) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Director of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

(g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Director an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(3).

R311-203-4. Underground Storage Tank Registration Fee.

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Director may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Sections R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) The Director shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

(1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,

(2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

(f) An underground storage tank will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of significant operational compliance with leak prevention or leak detection requirements during an inspection, and remains out of compliance for six months or greater following the initial inspection. The higher registration

fee shall be due July 1 following the documented six-month period of non-compliance. A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).

R311-203-5. UST Testing Requirements.

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(b) Automatic line leak detector testing. Line leak detectors shall be tested annually for functionality according to 40 CFR 280.44(a) and R311-200-1(b)(4). An equivalent test may be approved by the Director. The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump.

(c) Containment sump testing. When a sump sensor is used as a leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Director.

(d) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b)(2), or other criteria approved by the Director. The tester who performs the test shall provide the following information: location of at least three test points per tank, location of one remote test point for galvanic systems, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(e) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

R311-203-6. Secondary Containment and Under-dispenser Containment.

(a) Secondary containment for tanks and piping.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an underground storage tank system after October 1, 2008 shall have secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

(A) at the submersible pump or other location where the piping connects to the tank;

(B) where the piping connects to a dispenser, or otherwise goes above-ground; and

(C) where double-walled piping that is required under Subsection (a) connects with existing piping.

(4) Containment sumps for piping that is installed under Subsection (a) shall:

(A) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

(A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or

(B) piping that connects two or more tanks to create a siphon system.

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

(A) be liquid-tight on its sides, bottom, and at all penetrations;

(B) be compatible with the substance conveyed by the piping; and

(C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Director documentation to show that the requirements of Subsections (a) and (b) to not apply to the installation. The documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility, and

(B) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections (a) and (b).

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

(1) the closest part of the nearest community water system, including:

(A) the location of the wellheads for groundwater and/or the location of the intake points for surface water;

(B) water lines, processing tanks, and water storage tanks; and

(C) water distribution/service lines under the control of the community water system operator, or

(2) the wellhead of the nearest existing potable drinking water well.

(e) If a new underground storage tank facility is installed, and is not within 1000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections (a) and (b) apply if the owner or operator installs a potable drinking water well at the facility that is within 1000 feet of the underground tanks, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

KEY: fees, hazardous substances, petroleum, underground storage tanks

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R311. Environmental Quality, Environmental Response and Remediation.
R311-204. Underground Storage Tanks: Closure and Remediation.
R311-204-1. Definitions.

Definitions are found in Section R311-200.

R311-204-2. Underground Storage Tank Closure Plan.

(a) Owners or operators of all underground storage tanks or any portion thereof which are to be permanently closed or undergo change-in-service shall submit a permanent closure plan to the Director. The permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with 40 CFR 280 Subpart G.

(b) If a tank is to be removed as part of corrective action as allowed by 40 CFR 280 Subpart G, the owner or operator is not required to submit a closure plan, but must meet the requirements of 40 CFR 280.66(d) before any removal activity takes place, and must submit a corrective action plan as required by 40 CFR 280.66.

(c) The closure plan shall address applicable issues involved with permanent closure or change-in-service, including: tank disposal handling and final disposal site, product removal, sludge disposal, vapor purging or inerting, removing or securing and capping product piping, removing vent lines or securing vent lines open, tank cleaning, environmental sampling, contaminated soil and water management, in-place tank disposal or tank removal, transportation of tank, permanent disposal and other disposal activities which may affect human health, human safety or the environment.

(d) No underground storage tank shall be permanently closed or undergo change-in-service prior to the owner or operator receiving final approval of the submitted permanent tank closure plan by the Director, except as outlined in Subsection R311-204-2(b). Closure plan approval shall be effective for a period of one year. If the underground storage tank has not been permanently closed or undergone change in service as proposed within one year following approval from the Director, the plan must be re-submitted for approval, unless otherwise approved by the Director.

(e) Permanent closure plans shall be prepared using the current approved form according to guidance furnished by the Director.

(f) The owner or operator shall ensure that the approved permanent closure plan and approval letter are on site during all closure activities.

(g) Any deviation from or modification to an approved closure plan must be approved by the Director prior to implementation, and must be submitted in writing to the Director.

(h) The Director shall be notified at least 72 hours prior to the start of closure activities.

R311-204-3. Disposal.

(a) Tank labeling. All tanks which are permanently closed by removal must be labeled immediately after being removed from the ground with the facility identification number and information about previously contained substances.

(1) Removed tanks which have contained motor fuels or other regulated products, except leaded motor fuels, must be labeled with letters at least two inches high which read:

"CONTAINED (UNLEADED GASOLINE, DIESEL OR OTHER AS APPROPRIATE), FLAMMABLE. REMOVED: MONTH/DAY/YEAR."

(2) Removed tanks which have contained leaded motor fuel, or whose service history is unknown, must be labeled with letters at least two inches high which read:

"CONTAINED LEADED GASOLINE. HEATING RELEASES LEAD VAPORS, FLAMMABLE. REMOVED: MONTH/DAY/YEAR."

(b) Removed tanks shall be expeditiously disposed of as regulated underground storage tanks by the following methods:

(1) The tank may be cut up after the interior atmosphere is first purged or inerted.

(2) The tank may be crushed after the interior atmosphere is first purged or inerted.

(3) The tank may not be used to store food or liquid intended for human or animal consumption.

(4) The tank may be disposed of in a manner approved by the Director.

(c) Tank transportation. Used tanks which are transported on roads of the State of Utah must be cleaned inside the tank prior to transportation, and be free of all product, free of all vapors, or rendered inert during transport.

R311-204-4. Closure Notice.

(a) Owners or operators of underground storage tanks which were permanently closed or had a change-in-service prior to December 22, 1988 shall submit a completed closure notice, unless the tanks were properly closed on or before January 1, 1974.

(b) Owners or operators of underground storage tanks which are permanently closed or have a change-in-service after December 22, 1988 shall submit a completed closure notice form and the following information within 90 days after tank closure:

(1) All results from the closure site assessment conducted in accordance with Section R311-205, including analytical laboratory results and chain of custody forms.

(2) Effective January 1, 1993, a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include: scale, north arrow, streets, property boundaries, building structures, utilities, underground storage tank system location, location of any contamination observed or suspected during sampling, location and volume of any stockpiled soil, the extent of the excavation zone, and any other relevant features. All sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(c) Owners and operators of underground storage tanks that are temporarily closed for a period greater than three months shall submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

(d) All closure notices for permanent and temporary closure shall be submitted on the current approved forms.

R311-204-5. Remediation.

(a) Any UST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a Certified UST Consultant, except as outlined in sections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii), and R311-204-5(b).

(b) At the time of UST closure, a certified UST Remover may overexcavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the Director, in addition to the minimum amount required for closure of the UST. This overexcavation may be performed without the supervision of a certified UST Consultant. Appropriate confirmation samples must be taken by a certified groundwater and soil sampler in accordance with R311-201 for the purpose of determining the extent and degree of contamination.

KEY: hazardous substances, petroleum, underground storage tanks
September 9, 2004 19-6-105

Notice of Continuation April 10, 2012 **19-6-402**
19-6-403

R311. Environmental Quality, Environmental Response and Remediation.
R311-205. Underground Storage Tanks: Site Assessment Protocol.
R311-205-1. Definitions.

Definitions are found in Rule R311-200.

R311-205-2. Site Assessment Protocol.

(a) General Requirements.

(1) When a site assessment or site check is required, pursuant to 40 CFR 280 or Subsection 19-6-428(3), owners or operators shall perform or commission to be performed a site assessment or a site check according to the protocol outlined in Rule R311-205 or equivalent, as approved by the Director. Additional environmental samples must be collected when contamination is found, suspected, or as requested by the Director.

(2) This Subsection incorporates by reference the documents referenced in Subsections R311-205-2(a)(2)(A) through (C). These documents contain guidance and methodologies for collecting soil and groundwater samples.

(A) Groundwater samples shall be collected in accordance with "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), published by EPA and dated September 1986, or as determined by the Director.

(B) Surface water samples shall be collected in accordance with protocol established in "Compendium of ERT Surface Water and Sediment Sampling Procedures", published by EPA and dated January 1991, or as determined by the Director.

(C) Soil samples shall be collected in accordance with "Description and Sampling of Contaminated Soils, A Field Pocket Guide", published by EPA and dated November 1991, or as determined by the Director.

(3) Owners and operators must document and report to the Director sample types, sample locations and depths, field and sampling measurement methods, the nature of the stored substance, the type of backfill and native soil, the depth to groundwater, and other factors appropriate for identifying the source area and the degree and extent of subsurface soil and groundwater contamination.

(4) The owner or operator shall report the discovery of any release or suspected release to the Director within twenty-four hours. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release. Owners or operators shall begin release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(5) All environmental samples shall be collected by a certified groundwater and soil sampler who meets the requirements of Rule R311-201. The certified groundwater and soil sampler shall record the depth below grade and location of each sample collected to within one foot.

(6) All environmental samples shall be analyzed within the time frame allowed, in accordance with Table 4.1 of "RCRA Ground-Water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), by a Certified Environmental Laboratory. Soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

(7) Environmental samples for UST permanent closure or change in service shall be collected according to the protocol outlined in Subsection R311-205-2(b), after the UST system is emptied and cleaned and after the closure plan has been approved.

(8) Environmental confirmation samples are required following overexcavation of soils. Confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent and degree of a release from any portion of the UST in accordance with 40 CFR 280, Subparts E, F and G. Additional confirmation samples may be required as determined by the Director.

(9) Upon confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and all other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the Director within the specified time frames as outlined in compliance schedules.

(10) When conducting environmental sampling to satisfy the requirements of 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as outlined in compliance schedules, or as determined by the Director. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the Director, may be used to satisfy requirements of determining native soil type.

(11) Other types of environmental or quality assurance samples may be required as determined by the Director.

(b) Site Assessment Protocol for UST Closure.

(1) The appropriate number of environmental samples, as described in Subsection R311-205-2(b)(4) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping or dispenser island. Any other samples required by Subsection R311-205-2(a) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsection R311-205-2(b)(4) shall be collected from the unsaturated zone immediately above the capillary fringe. Groundwater samples shall be collected using proper surface water collection techniques, from a properly installed groundwater monitoring well, or as determined by the Director. All environmental samples shall be analyzed using the appropriate analytical methods outlined in Subsection R311-205-2(d).

(2) One soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental samples, at each tank and product piping area. For all dispenser islands, only one representative sample to determine native soil type is required. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for UST closure.

(3) For purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in-place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.

(4) Environmental Sampling Protocol for UST closures:

(A) For a tank area containing one UST, one soil sample shall be collected at each end of the tank. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(B) For a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(C) Product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections and fittings, at intervals which do not allow more than 50 linear feet of piping in a single

piping area to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(D) For dispenser islands, environmental samples shall be collected from the middle of each dispenser island. Additional environmental samples shall be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater was encountered.

(c) Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program.

(1) Owners or operators wishing to re-apply for participation in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation shall perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a). The tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(2) The owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program. The Director shall review and approve the site check plan prior to its implementation. The site check shall meet the sampling requirements for USTs, dispensers and piping as defined in Subsection R311-205-2(b), or as determined by the Director on a site-specific basis. Additional sampling may be required by the Director based on review of the proposed site check plan and site specific conditions.

(d) Laboratory Analyses of Environmental Samples.

(1) Environmental samples which have been collected to determine levels of contamination from underground storage tanks shall be analyzed by a Certified Environmental Laboratory. Unless otherwise approved by the Director, the required analytes and corresponding analytical methods shall be:

(A) Gasoline contamination-

(i) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C_6 - C_{10}) by either EPA 8015 or EPA 8260; and

(ii) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), and methyl tertiary butyl ether (MTBE) by either EPA 8021 or EPA 8260.

(B) Diesel fuel contamination-

(i) total petroleum hydrocarbons (extractable TPH as diesel range organics C_{10} - C_{28}) by EPA 8015; and

(ii) benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN) by either EPA 8021 or EPA 8260.

(C) Used oil contamination-

(i) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and

(ii) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by EPA 8021 or EPA 8260.

(D) New oil contamination- oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664.

(E) Contamination from underground storage tanks which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the Director.

(F) Contamination for an unknown petroleum product type-

(i) total petroleum hydrocarbons (purgeable TPH as gasoline range organics C_6 - C_{10}) by either EPA 8015 or EPA 8260;

(ii) total petroleum hydrocarbons (extractable TPH as diesel range organics C_{10} - C_{28}) by EPA 8015;

(iii) oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH) by EPA 1664; and

(iv) benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN), methyl tertiary butyl ether (MTBE), and halogenated volatile organic compounds (VOX) by either EPA 8021 or EPA 8260.

(2) All original laboratory sample results must be returned to the certified groundwater and soil sampler or certified UST consultant to verify all chain of custody protocols, including holding times and analytical procedures, were properly followed. Environmental samples shall be collected and transported under chain of custody according to EPA methods as approved by the Director.

(3) Reporting limits used by laboratories analyzing environmental samples taken under this rule shall be below initial screening levels for the contaminated media under study. Environmental samples shall be analyzed with the least possible dilution to ensure reporting limits are below initial screening levels to the extent possible. If more than one determinative analysis is performed on any given environmental sample, the final dilution factor used and the reporting limit must be reported by the laboratory. As an alternative to diluting environmental samples, the laboratory shall consider using appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference. Any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

KEY: petroleum, underground storage tanks

February 14, 2011	**19-6-105**
Notice of Continuation April 10, 2012	**19-6-403**
	19-6-413

R311. Environmental Quality, Environmental Response and Remediation.
R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.
R311-206-1. Definitions.

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

(1) meet all requirements for participation in the Environmental Assurance Program, or

(2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(1) the owner or operator has a certificate of registration;

(2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

(3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(4) the owner or operator has submitted a letter to the Director stating that based on customary business inventory practices standards there has been no release from the tank;

(5) the owner or operator has submitted a completed application according to a form provided and approved by the Director, and has declared the financial assurance mechanism that will be used;

(6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees; and

(7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(3).

R311-206-4. Requirements for Environmental Assurance Program Participants.

(a) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the Director as a specific number of gallons, based on the throughput for the previous calendar year.

(b) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the Director, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(c) In accordance with Subsection 19-6-411(6), the Director may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(e) Auditing of UST facility throughput records for fiscal year 1998.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility for the months of July 1997 through June 1998. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The Director may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Director.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Director.

(D) All costs of an independent audit shall be paid by the owner or operator.

(f) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of $10,000 upon request and to the satisfaction of the Director. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Director may require the owner or operator to submit an independent audit to demonstrate net worth for self insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(e)(2).

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2)(a) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent yearly review of a financial assurance document shall be due on July 1 annually.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply

with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.107. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the Director, and an additional processing fee shall be paid in circumstances as determined by the Director.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Director each year as follows:

(1) Owners and operators using the financial test of self insurance shall submit the "Letter from Chief Financial Officer" to the Director within the maximum 120 day period specified in 40 CFR 280.95.

(2) Owners and Operators using insurance and risk retention group coverage for financial assurance shall submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Director within 30 days of acceptance of such policy by the insurer or risk retention group.

(A) If the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Director as well as the insured.

(B) The insurer shall have a rating of A- or greater by A.M.Best Co.

(3) Owners and operators using an irrevocable letter of credit shall submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Director within 30 days of issuance from the issuing institution.

(4) Owners and operators using a fully funded trust fund for financial assurance shall submit proof of the trust fund and formal certification of acknowledgement to the Director within 30 days after implementation of the trust fund.

(5) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.

(6) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance.

(7) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(8) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Director within 120 days of the end of the owner/operator's or guarantor's fiscal year.

(d) The Director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Director within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Director may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Director.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Director shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Director.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);

(2) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section 53-7-106;

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(a) The Director shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2), Subsection 19-6-428(3), and Section R311-206-3.

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Director may

revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. Delivery Prohibition.

(a) In accordance with Subsection 19-6-411(7), the Director shall authorize the placement of a delivery prohibition tag identifying a tank:

(1) for which the certificate of compliance has been revoked in accordance with Section 19-6-414, or

(2) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5), or

(3) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(a)(4), or

(4) that is a new installation, and has not been issued a certificate of compliance.

(b) In accordance with Subsection 19-6-403(1)(b)(i), the Director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank:

(1) does not have spill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or

(2) does not have overfill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or

(3) does not have equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D, or

(4) does not have equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(c) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(d) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under R311-206-8(e).

(e) The Director may issue written approval for a delivery of petroleum to:

(1) provide ballast for a new tank during installation, or

(2) allow for the tank tightness test required under Section 19-6-413.

(f) The delivery prohibition tag shall remain in place until the Director issues:

(1) for tanks that have a tag in place in accordance with Subsection R311-206-8(a):

(A) a new certificate of compliance for the tank, and

(B) written authorization to remove the delivery prohibition tag, or

(2) for tanks that have a tag in place in accordance with Subsection R311-206-8(b):

(A) written authorization to remove the delivery prohibition tag.

(g) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(f)(1)(B) or Subsection R311-206-8(f)(2)(A), the UST owner or operator shall be subject to:

(1) a re-inspection and any applicable fees, and

(2) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(a) Owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

(1) permanently closing tanks as outlined in 40 CFR 280, subpart G, Rule R311-204, and Rule R311-205, or

(2) meeting the following requirements:

(A) demonstrating compliance with Section R311-206-5, and

(B) notifying the Director in writing at least 30 days before the date of cessation of participation in the program, and specifying the date of cessation.

(i) The Director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under R311-206-5 for other USTs owned or operated by the owner or operator.

(ii) The date of cessation of participation in the program may occur after the date designated in Subsection R311-206-9(a)(2)(B) if the owner or operator does not document compliance with R311-206-5 by the date originally designated.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation of participation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

(1) notify the Director of the intent to participate in the program;

(2) comply with the requirements of Subsection 19-6-428(3), and

(3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.

(b) In accordance with Subsection 19-6-428(3)(b), the Director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable, and

(iv) internal lining inspections, if applicable.

(3) The period of non-participation in the Program is less than six months, or the UST is less than ten years old.

KEY: hazardous substances, petroleum, underground storage tanks

September 14, 2012 19-6-105

Notice of Continuation April 10, 2012 19-6-403

19-6-428

R311. Environmental Quality, Environmental Response and Remediation.
R311-208. Underground Storage Tank Penalty Guidance.
R311-208-1. Definitions.

Definitions are found in Rule R311-200.

R311-208-2. Underground Storage Tank Penalty Criteria.

(a) This guidance provides criteria to the Director in implementing penalties under Sections 19-6-407, 19-6-408, 19-6-416, 19-6-416.5, 19-6-425 and any other Sections authorizing the Director to seek penalties.

(b) The procedures in Rule R311-208 are intended solely for the guidance of the Director and are not intended, and cannot be relied upon, to create a cause of action against the State.

(c) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result.

R311-208-3. Satisfaction of Penalty Under Stipulated Penalty Agreement.

(a) The Director may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Section 19-1-102(3):

(1) Payment of the penalty may be extended based on a person's inability to pay. This should be distinguished from a person's unwillingness to pay. In cases of financial hardship, the Director may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) Without regard to financial hardship, the Director may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Director.

(3) In some cases, the Director may allow the violator to satisfy the stipulated penalty by completing an environmentally beneficial mitigation project approved by the Director. The following criteria shall be used in determining the eligibility of such projects:

(A) The project must be in addition to all regulatory compliance obligations;

(B) The project preferably should closely address the environmental effects of the violation;

(C) The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

(D) The project must primarily benefit the environment rather than benefit the violator;

(E) The project must be judicially enforceable;

(F) The project must not generate positive public perception for violations of the law.

R311-208-4. Factors for Imposition of Section 19-6-416 Penalties.

(a) Where the Director determines a penalty is appropriate under Section 19-6-416, the penalty shall not be more than $500 per occurrence. Factors that mitigate against a higher penalty are:

(1) A facility's certificate of compliance recently lapsed and product has been delivered.

(2) A facility is in compliance and replaces their tank and received one delivery of fuel without a certificate of compliance or authorization from the department, or a new facility or new tanks receive an initial delivery of fuel without a certificate of compliance or authorization from the Director.

(b) The Director may assess a penalty against each violator involved in an illegal delivery occurrence. If a violator is operating as an owner/operator and deliverer, the violator may be assessed a penalty in each capacity.

R311-208-5. Factors for Seeking or Negotiating Amount of Section 19-6-425 Penalties.

(a) Under Section 19-6-425, the court establishes penalty amounts rather than the Director. Nonetheless, the Director may enter a stipulated penalty agreement with the violator.

(b) The Director shall consider the following factors when negotiating or calculating a penalty to promote a more swift resolution of environmental problems and promote compliance:

(1) Economic benefit. The costs to an owner or operator delayed or avoided by not complying with applicable laws or rules.

(2) Gravity of the violation. The extent of deviation from the rules and the potential for harm to health and the environment, regardless of the extent of the harm that actually occurred. This factor may be adjusted upward or downward depending on:

(A) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(B) The willfulness or negligence of the violation;

(C) The history of compliance or noncompliance; and

(D) Other unique factors including how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance

(3) Environmental sensitivity. The actual impact of the violation(s) that occurred.

(4) The number of days of noncompliance.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

(c) All cases involving major violations with actual or high-potential for harming public health or the environment, and all cases involving a history of repeat violations by the same violator will require a penalty as a part of any settlement, unless good cause is shown for not seeking a penalty.

(d) Where the Director determines that a penalty is appropriate under Section 19-6-425, the Director may negotiate the penalty based on the following categories and ranges:

(1) Major Violations: $5,000 to $10,000 per violation. This category includes major deviations from the requirements of the rules or Act, violations that cause or may cause substantial or continuing risk to human health and the environment, or violations that may have a substantial adverse effect on the regulatory program.

(2) Moderate Violations: $2,000 to $7,000 per violation. This category includes moderate deviations from the requirements of the rules or Act but some requirements have been implemented as intended, violations that cause or may cause a significant risk to human health and the environment, or violations that may have a significant notable adverse effect on the regulatory program.

(3) Minor Violations: Up to $3,000 per violation. This category includes slight deviations from the rules or Act but most of the requirements are met, violations that cause or may cause a relatively low risk to human health and the environment, or violations that may have a minor adverse effect on the regulatory program.

(e) The Director may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance to R311-208-5.

KEY: penalties, petroleum, underground storage tanks*
September 16, 1996 19-6-105
Notice of Continuation April 10, 2012 19-6

R311. Environmental Quality, Environmental Response and Remediation.
R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.
R311-209-1. Definitions.

Definitions are found in Section R311-200.

R311-209-2. Use of the State Cleanup Appropriation.

The Director shall authorize action or expenditure of money from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, as authorized by Sections 19-6-405.7, 19-6-409(5) and 19-6-424.5(9) respectively, when:

(a) The release is from a regulated UST,

(b) The owner or operator is not fully covered by the Petroleum Storage Tank Trust Fund,

(c) The release is a direct or potential threat to human health or the environment, and

(d) The owner or operator is unknown, unable, or unwilling to bring the site under control or remediate the site to achieve the clean-up goals as described in Section R311-211, or

(e) Other relevant factors are evident as determined by the Director.

R311-209-3. Criteria for Allocating Petroleum Storage Tank Cleanup Funds and the State Cleanup Appropriations.

When determining priorities for authorizing action or expenditures from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, the Director shall give due emphasis to releases that present a threat to the public health or the environment on a case-by case basis using the following criteria:

(a) The immediate or direct threat to public health or the environment,

(b) The potential threat to public health or the environment,

(c) The economic consideration and cost effectiveness of the action, and

(d) The technology available, or

(e) Other relevant factors as determined by the Director.

KEY: petroleum, underground storage tanks*
October 9, 1998 19-6-105
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R311. Environmental Quality, Environmental Response and Remediation.
R311-211. Corrective Action Cleanup Standards Policy - UST and CERCLA Sites.
R311-211-1. Definitions.

Definitions are found in Section R311-200.

R311-211-2. Source Elimination.

The initial step in all corrective actions implemented at UST and CERCLA sites is to take appropriate action to eliminate the source of contamination either through removal or appropriate source control.

R311-211-3. Cleanup Standards Evaluation Criteria.

Subsequent to source elimination, cleanup standards for remaining contamination which may include numerical, technology-based or risk-based standards or any combination of those standards, shall be determined on a case-by-case basis, taking into consideration the following criteria:

(a) The impact or potential impact of the contamination on the public health;

(b) The impact or potential impact of the contamination on the environment;

(c) Economic considerations and cost effectiveness of cleanup options; and

(d) The technology available for use in cleanup.

R311-211-4. Prevention of Further Degradation.

In determining background concentrations, cleanup standards, and significance levels, levels of contamination in ground water, surface water, soils or air will not be allowed to degrade beyond the existing contamination levels determined through appropriate monitoring or the use of other data accepted by the Board or the Director as representative.

R311-211-5. Cleanup Standards.

(a) The following shall be the minimum standards to be met for any cleanup of regulated substances, hazardous material, and hazardous substances at a UST or CERCLA facility in Utah:

(1) for water-related corrective action, the Maximum Contaminant Limits (MCLs) established under the federal Safe Drinking Water Act or other applicable water classifications and standards; and

(2) for air-related corrective action, the appropriate air quality standards established under the Federal Clean Air Act.

(3) Other standards as determined applicable by the Board may be utilized.

(b) Cleanup levels below the MCLs or other applicable water, soil, or air quality standards may be established by the Board on a case-by-case basis taking into consideration R311-211-3 and R311-211-4.

(c) In the case of contamination above the MCL or other applicable water, soil, or air quality standards, if, after evaluation of all alternatives, it is determined that applicable minimum standards cannot reasonably be achieved, cleanup levels above these minimum standards may be established on a case-by-case basis utilizing R311-211-3 and R311-211-4. In assessing the evaluation criteria, the following factors shall be considered:

(1) quantity of materials released;

(2) mobility, persistence, and toxicity of materials released;

(3) exposure pathways;

(4) extent of contamination and its relationship to present and potential surface and ground water locations and uses;

(5) type and levels of background contamination; and

(6) other relevant standards and factors as determined appropriate by the Board.

R311-211-6. UST Facility Cleanup Standards.

(a) This rule incorporates by reference the Initial Screening Levels table dated November 1, 2005. The table lists initial screening levels for UST sites.

(b) If the Director determines that a release from an underground storage tank has occurred, the Director shall evaluate whether the contamination at the site exceeds Initial Screening Levels for the contaminants released. The Director may require owners and operators to submit any information that the Director believes will assist in making this evaluation.

(c) If all contaminants are below initial screening levels, the Director shall evaluate the site for No Further Action determination.

(d) This rule incorporates by reference the Tier 1 Screening Criteria table dated November 1, 2005. The table lists cleanup criteria for UST sites. Tier 1 screening levels are only applicable when the following site conditions are met:

(1) No buildings, property boundaries or utility lines are located within 30 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively, and;

(2) No water wells or surface water are located within 500 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively.

(e) If any contaminants from a release are above the Initial Screening Levels, the Director shall require owners and operators to submit all relevant information required to evaluate the site using the Tier 1 Screening Criteria.

(1) If all Tier 1 Screening Criteria have been met, the Director shall evaluate the site for No Further Action determination.

(2) If any of the Tier 1 Screening Criteria have not been met owners and operators shall proceed as described below.

(i) Owners and operators shall conduct a site investigation to provide complete information to the Director regarding the factors outlined in R311-211-5(c) and 40 CFR Part 280.

(ii) When the site investigation is complete, owners and operators may propose for the evaluation and approval of the Director site-specific cleanup standards based upon an analysis of the factors outlined in R311-211-5(c). Alternatively, the owners and operators may propose for the approval of the Director the Initial Screening Levels established in R311-211-6(a) as the site-specific cleanup standards.

(iii) A partial corrective action approach may be approved by the Director prior to completing the site investigation. However, if corrective action is implemented in separate phases, the Director will not make a No Further Action determination until all factors outlined in R311-211-5(c) are evaluated.

(iv) Owners and operators may then propose and conduct corrective action approved by the Director to attempt to reach the approved site-specific cleanup standards. If the owners and operators demonstrate that the approved site-specific cleanup standards have been met and maintained based upon sampling at intervals and for a period of time approved by the Director, the Director shall evaluate the site for No Further Action determination.

(v) If the owners and operators do not make progress toward reaching site-specific cleanup standards after conducting the approved corrective action, the Director may require the owners and operators to submit an amended corrective action plan or an amended site-specific cleanup standards proposal and analysis of the factors outlined in R311-211-5(c) for the Director's approval. The Director may also require further investigation to fully define the extend and degree of the contamination if the passage of time or other factors creates the

possibility that existing data may no longer be reliable.

R311-211-7. Significance Level.

(a) Where contamination is identified that is below applicable MCLs, water classification standards, or air quality standards or where applicable standards do not exist for either the parameter in question or the environmental media in which the contamination is found, the cleanup standard shall be established using R311-211-3 and will be set between background and the observed level of contamination. Should it be determined that the observed level of contamination will be allowed to remain, this becomes the significance level.

(b) At any time, should continued monitoring identify contamination above the significance level, the criteria of R311-211-3 will be reapplied in connection with R311-211-4 to re-evaluate the need for corrective action and determine an appropriate cleanup standard.

KEY: petroleum, underground storage tanks
May 15, 2006 **19-6-105**
Notice of Continuation April 10, 2012 **19-6-106**
19-6-403

R311. Environmental Quality, Environmental Response and Remediation.
R311-212. Administration of the Petroleum Storage Tank Loan Fund.
R311-212-1. Definitions.

Definitions are found in Section R311-200.

R311-212-2. Loan Application Submittal.

(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-405.3(7). Loan applications shall be accepted during application periods designated by the Director.

(b) As long as loan funds are available at least one application period shall be designated each fiscal year. Additional funds available through repayment of existing loans shall be loaned according to priorities from the most recent application period.

(c) Applications must be received by the Director by 5:00 p.m. on the last day of a given application period.

(d) Loan applications received outside the application period shall be invalid.

R311-212-3. Eligibility Review.

(a) The Director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-405.3(3), 19-6-405.3(4), 19-6-405.3(5) and 19-6-405.3(6).

(b) To meet the eligibility requirements of 19-6-405.3(4) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-405.3(4) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-405.3(3), the loan request must be for the purpose of:

(1) Upgrading petroleum USTs;

(2) replacing USTs; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

R311-212-4. Prioritization of Loan Applications.

(a) When determined by the Director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than $1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Director by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of applications which have not been reviewed terminates. An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-405.3(3) through (6), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

R311-212-5. Loan Application Review.

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Director may require payment of costs in advance. The Director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) The applicant must close the loan within 30 days after the Director mails the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Director if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) When an applicant applies for a loan of greater than $30,000, the loan applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation

of the value of the property to be used as security using:

(1) a current written appraisal, performed by a State of Utah certified appraiser;

(2) a current county tax assessment notice, or

(3) other documentation acceptable to the Director.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Director by a title company or appropriate professional person approved by the Director.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

(i) If a loan is made without security, the maximum loan repayment period shall be seven years.

R311-212-7. Procedure for Making Loans.

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Director.

(b) The Director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins. The initial disbursement shall be for no more than 40 per cent of the approved loan amount. Disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and all paperwork and notifications have been received by the Director.

(1) If an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement. Disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the Director, following the initial disbursement.

(2) Funds disbursed through an initial disbursement under Subsection R311-212-7(b) shall begin to accrue interest at 3% per annum on the day they are disbursed. The interest accumulated on these funds from the date of the initial disbursement until the date of the final loan disbursement shall be repaid in full with the first loan payment made by the borrower after the final disbursement, or as otherwise approved by the Director.

(3) If work is not initiated or completed within the time periods established in Subsection R311-212-7(b)(1), the loan balance shall be paid within 30 days of notice provided by the Director.

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-8. Servicing the Loans.

(a) The Director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-405.3(6)(e). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(b) The initial installment payment shall be due on a date established by the Director. Subsequent installment payments shall be due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(c) The Director shall apply loan payments received first to penalty, next to interest and then to principal.

(d) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Director more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Director by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing under section R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Director need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Section R311-212, and shall be used by the Director for making loans.

(1) Loan Application version 06/21/11

(2) Balance Sheet version 04/02/04

(3) Loan Commitment Agreement version 06/15/95

(4) Corporate Authorization version 06/15/95

(5) Promissory Note version 06/15/95

(6) Extension and Modification Agreement version 06/15/95

(7) Security Agreement version 06/15/95

(8) Hypothecation Agreement 06/15/95

(9) General Pledge Agreement 06/15/95

(10) Assignment 06/15/95

(11) Assignment of Account 06/15/95

(12) Trust Deed

(i) property with underground storage tanks version 06/15/95; or

(ii) property without underground storage tanks version 06/15/95.

(b) The Director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

KEY: hazardous substances, petroleum, underground storage tanks

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19-6-405.3

R311. Environmental Quality, Environmental Response and Remediation.
R311-500. Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program.
R311-500-1. Objective, Scope and Authority.

(a) Objective. The Decontamination Specialist Certification Program is designed to assist in helping ensure that personnel in charge of decontamination are trained to perform cleanups and knowledgeable of established decontamination standards; to develop methods whereby an applicant can demonstrate competency and obtain certification to become a Certified Decontamination Specialist; to protect the public health and the environment; and to provide for the health and safety of personnel involved in decontamination activities.

(b) Scope. These certification rules apply to individuals who perform decontamination of property that is on the contamination list specified in Section 19-6-903(3)(b) of the Illegal Drug Operations Site Reporting and Decontamination Act.

(c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation:

(1) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(2) a process for revoking the certification of a Decontamination Specialist who fails to maintain the certification standards.

R311-500-2. Definitions.

(a) Refer to Section 19-6-902 for definitions not found in this rule.

(b) For the purposes of the Decontamination Specialist Certification Program rules:

(1) "Applicant" means any individual who applies to become a Certified Decontamination Specialist or applies to renew the existing certificate.

(2) "Board" means the Solid and Hazardous Waste Control Board.

(3) "Certificate" means a document that evidences certification.

(4) "Certification" means approval by the Director or the Board to perform decontamination of contaminated property under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act.

(5) "Certification Program" means the Division's process for issuing and revoking the Certification.

(6) "Confirmation Sampling" means collecting samples during a preliminary assessment or upon completion of decontamination activities to confirm that contamination is below the decontamination standards outlined in R392-600, Illegal Drug Operations Decontamination Standards.

(7) "Decontamination" means treatment or removal of contamination by a decontamination specialist or as otherwise allowed in the Illegal Drug Operations Site Reporting and Decontamination Act to reduce concentrations below the decontamination standards defined in R392-600 and to remove property from the contamination list specified in Subsection 19-6-903(3)(b).

(8) "Department" means the Utah Department of Environmental Quality.

(9) "Director" means the Director of the Division of Environmental Response and Remediation or the Director's designated representative.

(10) "Division" means the Division of Environmental Response and Remediation.

(11) "Lapse" in reference to the Certification, means to terminate automatically.

(12) "UAPA" means the Utah Administrative Procedures Act, Title 63 Chapter 46b.

R311-500-3. Delegation of Powers and Duties to the Director.

(a) The Director is delegated authority by the Board to administer the Decontamination Specialist Certification Program established within the Division.

(b) The Director may take any action necessary or incidental to develop certification standards and issue or revoke a certificate. These actions include but are not limited to:

(1) Establishing certification standards;

(2) Establishing and reviewing applications, certifications, or other data;

(3) Establishing and conducting testing and training;

(4) Denying applications;

(5) Issuing certifications;

(6) Evaluating compliance with the performance standards established in Section R311-500-8 through observations in the field, review of sampling methodologies and records or other means;

(7) Renewing certifications;

(8) Revoking certifications;

(9) Issuing notices and initial orders;

(10) Enforcing notices, orders and rules on behalf of the Board; and

(11) Requiring a Certified Decontamination Specialist or applicant to furnish information or records relating to his or her fitness to be a Certified Decontamination Specialist.

R311-500-4. Application for Certification.

(a) Any individual may apply for certification by paying the applicable fees and by submitting an application to the Director to demonstrate that the applicant:

(1) meets the eligibility requirements specified in R311-500-5; and

(2) will comply with the performance standards specified in R311-500-8 after receiving a certificate.

(b) Applications submitted under R311-500-4 shall be on a form approved by the Director and shall be reviewed by the Director to determine if the applicant is eligible for certification.

R311-500-5. Eligibility for Certification.

(a) For initial and renewal certification, an applicant must:

(1) Meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, including refresher training, as required by federal and state law; and

(2) Successfully pass a certification examination developed and administered under the direction of the Director.

(A) The contents of the initial certification examination and the renewal certification examination as well as the percentage of correct answers required to pass the examinations shall be determined by the Director before the tests are administered. The Director may offer a less comprehensive renewal certification examination to those individuals that have completed a Division sponsored renewal-training course.

(B) The Director shall determine the frequency and dates of the certification examinations.

(C) For applicants that fail the initial certification examination or the renewal certification examination, the Director may offer one additional examination within one month of the original test date without requiring submittal of a new application. The applicant shall pay a fee determined by the Director to cover the cost of the additional testing. Applicants that fail the re-examination shall wait six months prior to submitting a new application in accordance with R311-

500-4.

R311-500-6. Certification.

(a) Initial certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to R311-500-9. Certificates shall be subject to periodic renewal pursuant to R311-500-7.

R311-500-7. Renewal.

(a) A certificate holder may apply for certificate renewal by successfully completing the following prior to the expiration date of the current certificate:

(1) Submitting a completed renewal application on a form approved by the Director within the dates specified by the Director;

(2) Paying any applicable fees; and

(3) Passing a certification renewal examination.

(A) If the Director determines that the applicant meets the eligibility requirements of R311-500-5 and will comply with the performance standards of R311-500-8, the Director shall reissue the certificate to the applicant.

(B) If the Director determines that the applicant does not meet the eligibility requirements described in R311-500-5 or will not comply or has not complied with the performance standards of R311-500-8, the Director may issue a notice to deny certification in a manner consistent with R311-500-9.

(b) Renewal certificates shall be valid for two years and shall be subject to revocation under R311-500-9.

(c) Any individual who is not a Certified Decontamination Specialist on the date the renewal certification examination is given because the applicant's certification was revoked or expired prior to completing a renewal application must successfully meet the application and eligibility criteria for initial certification as specified in R311-500-4 and R311-500-5 prior to issuance of a certificate.

R311-500-8. Performance Standards.

(a) A Certified Decontamination Specialist performing decontamination activities at contaminated property:

(1) shall be certified prior to engaging in any decontamination activities for the purpose of removing the contaminated property from the list referenced in Section 19-6-903(3)(b) and display the certificate upon request;

(2) shall report to the local Health Department the location of any property that is the subject of decontamination work by the Decontamination Specialist;

(3) shall file a workplan with the local Health Department;

(4) shall perform work in accordance with the workplan;

(5) shall perform work meeting applicable local, state and federal laws, including certification and licensing requirements for performing construction work;

(6) shall oversee and supervise all decontamination activities and ensure any person(s) assisting with decontamination work at contaminated property meets Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120;

(7) shall disclose to any person(s) assisting with decontamination at contaminated property that work is being performed in a clandestine drug laboratory, inform the person(s) of the potential risks associated with this type of environment and ensure that the person(s) wears the necessary personal protective equipment as established by the Decontamination Specialist;

(8) shall make all decisions regarding decontamination and be the only individual conducting confirmation sampling;

(9) shall follow scientifically sound and accepted sampling procedures;

(10) shall submit a Final Report to the local Health Department, which includes an affidavit stating that the property has been decontaminated to the standards outlined in R392-600;

(11) shall maintain a current address and phone number on file with the Division;

(12) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and

(13) shall not participate in any other activities regulated under R311-500 without meeting all requirements of that certification program.

R311-500-9. Denial of Application and Revocation of Certification.

(a) Grounds for denial of an application or revocation of a certification may include any of the following:

(1) Failure to meet any of the application and eligibility criteria established in R311-500-4 and R311-500-5;

(2) Failure to submit a completed application;

(3) Evidence of past or current criminal activity;

(4) Demonstrated disregard for the public health, safety or the environment;

(5) Misrepresentation or falsification of figures, reports and/or data submitted to the local Health Department or the State;

(6) Cheating on a certification examination;

(7) Falsely obtaining or altering a certificate;

(8) Negligence, incompetence or misconduct in the performance of duties as a Certified Decontamination Specialist;

(9) Failure to furnish information or records required by the Director to demonstrate fitness to be a Certified Decontamination Specialist; or

(10) Violation of any certification or performance standard specified in this rule.

(b) Administrative proceedings regarding the denial of an application or the revocation of certification are governed by Rule R305-6.

R311-500-10. No Preemption.

(a) Certification to work as a Certified Decontamination Specialist does not relieve an individual from any requirement to obtain additional licenses or certificates in different specialties to the extent required by other agencies whose jurisdiction and authority may overlap the decontamination work. The Certified Decontamination Specialist shall obtain the additional licenses or certificates prior to performing the work for which the additional license or certificate is required. The Illegal Drug Operations Site Reporting and Decontamination Act Decontamination Specialist Certification Program rules do not preempt or supercede rules or standards promulgated by other regulatory programs in the State of Utah.

R311-500-11. Certified Decontamination Specialist List.

(a) The Director shall maintain a current list of Certified Decontamination Specialists that shall be made available to the public upon request.

KEY: meth lab contractor certification, adjudicative proceedings, administrative proceedings, revocation procedures

August 29, 2011 19-1-301
Notice of Continuation June 23, 2010 19-6-901 et seq.
63G-4-201 through 205
63G-4-503

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, 2010 ed., are adopted and incorporated by reference with the following revisions:

(1) Substitute "Director of the Division of Solid and Hazardous Waste" 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," "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), 2010 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 Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

(2) "Director" or "State Director" means the Director of the Division of Solid and Hazardous Waste, 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) "Director" means the Director of the Division of Solid and Hazardous Waste.

(3) "Division" means the Division of Solid and Hazardous Waste.

(4) "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.

(5) "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.

(6) "POHC's" means principle organic hazardous constituents.

(7) "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.

(8) "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".

(9) "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.

(10) "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 = Mean + t x 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 (Mean of lognormal-transformed data + 0.5 x Variance of lognormal-transformed data + Standard Deviation of lognormal-transformed data x 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, 2006 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.

Note: The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

"APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981.

KEY: hazardous waste
April 25, 2013 19-6-105
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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 Director 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 cannot 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 Director 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 Director on an annual basis if such changes occur. Such notification and certification should be sent to the Director by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste,

including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste N0. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Director, 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 Director 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 Director for reinstatement. The Director 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 that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director 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 Director 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 Director 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 Director 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 Director, 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(b)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(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 Director 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 Director 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 Director 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(s) 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:

TABLE

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 shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and

shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, 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 Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director 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 Director 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 Director 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 Director 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 Director 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 Director 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, 2010 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 2010 ed., 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(e) or R315-2-11(e) 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(e) or R315-2-11(e) 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 Director 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 173.54, or a "Division 1.1, 1.2, or 1.3 explosive" as defined in 49 CFR 173.50 and 173.53, 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 R315-1 through R315-13 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, 2010 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, 2010 ed., is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous

wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Director 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 Director 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), 2010 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Director 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 Director. 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 Director 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 Director directs.

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 Director and the decision of EPA will be binding upon the Board and the Director.

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 Section 19-1-301.5.

(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 Director and the decision of EPA will be binding upon the Board and the Director 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 "Director" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Director 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 Director 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-containing equipment as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.5.

R315-2-26. Exclusion of Comparable Fuel and Syngas Fuel.

The requirements of 40 CFR 261.38, 2010 ed., are adopted and incorporated by reference.

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 waste, administrative procedures

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Notice of Continuation July 13, 2011	**19-6-105**
	19-6-106
	63G-4-201 through 205
	63G-4-503

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 Director for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste permit 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 Director 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 Director 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 Director 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 Director fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the Director 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 Director sets for each individual facility for submitting part B of the application, which date shall be in no case less than six months after the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director will determine whether the R315-7 closure met R315-8 closure by removal or decontamination requirements within 90 days of its receipt. If the Director 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 Director will review any additional information submitted and make a final determination within 60 days.

(iii) If the Director 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 Director, 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 Director 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)(1) 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:

(i) Become effective by statute;

(ii) Are promulgated under R315-13, which incorporates by reference 40 CFR 268, restricting the placement of hazardous wastes in or on the land;

(iii) 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

(iv) 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.

(2) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R315-3-4.2 and R315-3-4.4, or the permit may be modified upon the request of the permittee as set forth in R315-3-4.3.

(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 Director 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 Director. 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 Director 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 Director 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 Director 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 Director 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 Director in accordance with the applicable review periods of 19-6-108. Upon completing the review, the Director shall notify the applicant in writing whether the permit application is complete. If the permit application is incomplete, the Director shall list the information necessary to make the permit application complete. When the permit application is for an existing hazardous waste management facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall review information submitted in response to a notice of deficiency within 30 days after receipt. The Director shall notify the applicant that the permit application is complete upon receiving this information. After the permit application is complete, the Director 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 Director 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 Director will specify when those facilities shall submit a permit application.

(2) The Director 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 Director 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 Director. 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 Director, 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 Director 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 Director.

(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 Director. The Director 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 Director 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).

(k) If the Director concludes, based on one or more of the factors listed in R315-3-2.1(k)1 that compliance with the standards of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE, alone may not be protective of human health or the environment, the Director shall require the additional information or assessment(s) to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk resulting from both direct and indirect exposure pathways.

(1) The Director shall base the evaluation on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) site-specific considerations such as proximity to receptors, such as schools, hospitals, or other potentially sensitive receptors, unique dispersion patterns, etc.;

(ii) identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk;

(iv) identities and quantities of other off-site sources of pollutants that significantly influence interpretation of a facility-specific risk assessment;

(v) ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by operation of the source;

(viii) adequacy of previously conducted risk assessment, given subsequent changes in conditions likely to affect risk; and

(ix) other factors as appropriate.

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 Director 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 Director.

(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 Director 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 Director:

(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 Director 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 Director may make allowance for submission of the information on a case-by-case basis. Information required in part B shall be submitted to the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director to specify as permit Principal Organic Hazardous Constituents (POHC's) those constituents for which destruction and removal efficiencies will be required.

(d) The Director 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 of a hazardous waste incineration unit becomes subject to RCRA permit requirements or 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 R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(d)), documenting compliance with all applicable requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE), the requirements of R315-3-2.10 do not apply, except those provisions the Director determines are necessary to ensure compliance with R315-8-15.6(a) and R315-8-15.6(c) if the owner or operator elects to comply with R315-3-9.1(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director 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), R315-3-2.1(k), R315-3-3.3(b)(2), and R315-3-3(b)(3).

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, 2006 ed., are adopted and incorporated by reference.

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 Director 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 Director 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, 2006 ed., regarding information requirements for process vents are adopted and incorporated by reference with the following exception:

Substitute "Director" 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, 2006 ed., regarding information requirements for equipment are adopted and incorporated by reference with the following exception:

Substitute "Director" 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.

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 Director 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 Director 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 Director within a reasonable time, any relevant information which the Director 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 Director upon request, copies of records required to be kept by this permit.

(i) Inspection and entry. The permittee shall allow the Director, 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 Director 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 Director shall be signed and certified, see R315-3-2.2.

(l) Reporting requirements.

(1) Planned changes. The permittee shall give notice to the Director 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 Director 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 Director 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 Director 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 Director of the Director's 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 Director. The Director 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 Director 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 Director. (See R315-8-5.4)

(8) Unmanifested waste report. This report shall be submitted to the Director 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 Director, he shall promptly submit all facts or information.

(m) Information repository. The Director 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 Director 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 Director determines necessary to protect human health and the environment.

(3) If the Director determines that conditions in addition to those required under R307-214-2 which incorporates by reference, 40 CFR parts 63, subpart EEE, R315-8 or R315-14 are necessary, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

(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 Director 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 Director 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 Director, 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 Director 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 Director. 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 Director by the new owner or operator of compliance with R315-8-8, which incorporates by reference 40 CFR 264, subpart H, the Director 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 Director 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 Director 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 Director 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 Director 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 materials and substantial alterations or additions to the approved facility or activity which occurred after permit issuance which justifies the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Director 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 Director 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 Director under R315-3-5.1(d), the Director 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 Director determines that modification or revocation and reissuance is appropriate.

(2) The Director 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, 2006 ed., are adopted and incorporated by reference with the following exception;

substitute "Director" for all Federal regulation references made to "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 Director 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 Director 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 Director 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 Director 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 Director 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 Director finds an imminent and substantial endangerment to human health or the environment the Director 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 Director 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 of a hazardous waste incineration unit becomes subject to RCRA permit requirements or 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 R307-214-2, which incorporates by reference 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with all applicable requirements of R307-214-2, which incorporates by reference 40 CFR 63, subpart EEE), the requirements of R315-3-6.3 do not apply, except those provisions the Director determines are necessary to ensure compliance with R315-8-15.6(a) and R315-8-15.6(c) if the owner or operator elects to comply with R315-3-9(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Director 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), R315-3-2.1(k), R315-3-3.3(b)(2), and R315-3-3.3(b)(3).

(a) For the purposes of determining operational readiness following completion of physical construction, the Director 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 Director 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 Director 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 Director 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 Director'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 Director 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 Director, 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director has issued such notice.

(i) This notice shall be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the Division.

(ii) This notice shall contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the Division;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

(7) During each approved trial burn, or as soon after the burn as is practicable, the applicant shall make the following determinations:

(i) A quantitative analysis of the trial POHCs in the waste feed to the incinerator.

(ii) A quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC, oxygen (O_2) and hydrogen chloride (HCl).

(iii) A quantitative analysis of the scrubber water, if any, ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs.

(iv) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in R315-8-15.4(a).

(v) If the HC1 emission rate exceeds 1.8 kilograms of HC1 per hour (4 pounds per hour), a computation of HC1 removal efficiency in accordance with R315-8-15.4(b).

(vi) A computation of particulate emissions in accordance with R315-8-15.4(c).

(vii) An identification of sources of fugitive emissions and their means of control.

(viii) A measurement of average, maximum, and minimum temperatures and combustion gas velocity.

(ix) A continuous measurement of carbon monoxide (CO) in the exhaust gas.

(x) All other information as the Director 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 Director 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 Director.

(9) All data collected during any trial burn shall be submitted to the Director 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 Director 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 Director may establish permit conditions, including but no limited to allowable waste feeds and operating conditions sufficient to meet the requirements of R315-8-15.6, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the Director.

(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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director finds may be necessary under R315-8-13.3(c). The Director 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 Director 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 Director 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 Director approves a later date.

(d) If the Director determines that the results of the field tests or laboratory analyses meet the requirements of R315-8-13.3, he will modify the second phase of the permit to incorporate any requirement necessary for operation of the facility in compliance with R315-8-13, based upon the results of the field tests or laboratory analyses.

(1) This permit modification may proceed under R315-3-4.3, which incorporates by reference 40 CFR 270.42, or otherwise will proceed as a modification under R315-3-4.2(a)(2). If such modifications are necessary, the second phase of the permit will become effective only after those modifications have been made.

(2) If no modification of the second phase of the permit are necessary, the Director 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 Director 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 Director 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 Director 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 Director deems necessary regarding testing and providing of information to the Director with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permit under this section, the Director 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 Director 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, 2006 ed., are adopted and incorporated by reference with the following exception:

"Director" means the Director of the Division of Solid and Hazardous Waste.

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 Director has reason to believe upon examination of a part A application that it fails to meet the requirements of R315-3-2.4, the Director shall notify the owner or operator in writing of the apparent deficiency. The notice shall specify the grounds for the Director'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 Director 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 Director 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 Director 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 Director 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 Director by the new owner or operator of compliance with R315-7-15, which incorporates by reference 40 CFR 265 subpart H, the Director 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:

"Director" means Director of the Division of Solid and Hazardous Waste.

R315-3-9. Integration with Maximum Achievable Control Technology (MACT) Standards.

9.1 OPTIONS FOR INCINERATORS AND CEMENT AND LIGHTWEIGHT AGGREGATE KILNS TO MINIMIZE EMISSIONS FROM STARTUP, SHUTDOWN, AND MALFUNTION EVENTS

(a) Facilities with existing permits. (1) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a hazardous waste-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Director 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, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the Director 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 Director control emissions from startup, shutdown, and malfunction events under any of the following options:

(i) RCRA option A.

(A) Under this option, the Director 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 Director 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 Director 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 Director 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 Director 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 Director under R307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2)(ii)(B); and

(B) The Director 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, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace 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 Director 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 Director 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 Director 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, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace 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 Director 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).

(c) new units that become subject to RCRA permit requirements shall control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(1) comply with the requirements specified in R315-307-214-2, which incorporates by reference 40 CFR 63.1206(c)(2); or

(2) request to include in the RCRA Permit, conditions that ensure emissions are minimized from startup, shutdown, and malfunction events based on review of information including the source's startup, shutdown, and malfunction plan and design. The Director will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

KEY: hazardous waste
April 25, 2013 19-6-105
Notice of Continuation July 13, 2011 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 Director 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 Director 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 Director 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 Director 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 Director'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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Director 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 Director'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 Director 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 Director under this section shall be publicly noticed and made available for public comment. The Director 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 Director 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 Director 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 Director 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.

(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 Director 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 Director may update the mailing list by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to a request from the Director 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 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 R305-7, Part 2 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 Director 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 Director 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 Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director 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 Director.

(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 Director 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 Director. 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 Director 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 Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director 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 Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director 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 Director to fulfill the purposes for which the repository is established. The Director 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 Director 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 Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director 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 Director. The Director 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 Director will investigate and provide written response to all citizen complaints duly submitted. In addition, the Director 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 Director 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 Director;

(iv) 200 ft. of Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas likely to be impacted by landslide, mudflow, or other earth movement;

(viii) farmlands classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas above aquifers containing ground water which has a total dissolved solids (TDS) content of less than 500 mg/l and which does not exceed applicable ground water quality standards for any contaminant. Land disposal facilities are also prohibited above aquifers containing ground water which has a TDS content of less than 3000 mg/l and which does not exceed applicable ground water quality standards for any contaminant. Non-land-based facilities above aquifers containing ground water which has a TDS content of 500 to 3000 mg/l and all facilities above aquifers containing ground water which has a TDS content between 3000 and 10,000 mg/l are permitted only where the depth to ground water is greater than 100 ft. The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification;

(x) recharge zones of aquifers containing ground water which has a TDS content of less than 3000 mg/l. Land disposal facilities are also prohibited in recharge zones of aquifers containing ground water which has a TDS content of less than 10,000 mg/l;

(xi) designated drinking water source protection areas or, if no source protection area is designated, a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for non-land-based facilities and five years ground water travel time plus 1000 feet for land disposal facilities. This requirement does not include on-site facility operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Director, 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 Director;

(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
April 25, 2013 19-6-105
Notice of Continuation July 13, 2011 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 "Director" 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 Director.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Director using EPA form 8700-12. Upon receiving the request the Director 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, according to the instructions included in 40 CFR 262, Appendix, 2009 ed. The requirements of 40 CFR 262, Appendix, 2009 ed., are adopted and incorporated by reference with the following exception: substitute "Director of the Division of Solid and Hazardous Waste" 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.

(g) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of R315-7-12.3(f) or R315-8-5. 4(f), the generator shall:

(1) Sign either:

(i) Item 20 of the new manifest if a new manifest is used for the returned shipment; or

(ii) Item 18c of the original manifest if the original manifest is used for the returned shipment;

(2) Provide the transporter a copy of the manifest;

(3) Within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

(4) Retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

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 transporting off-site, a generator shall placard or offer the initial transporter the appropriate placards according to the Department of Transportation regulations for the movement of hazardous materials under 49 CFR 172, subpart F.

3.34 ACCUMULATION TIME

(a) These requirements as found in 40 CFR 262.34, 2010 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 Director 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 Director 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 Director 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 Director or the Director's 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 Director 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 Director 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 Director. The submission to the Director 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.

(c) For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of R315-8-5.4(e)(1) through (6) or R315-7-12.3(e)(1) through (6)), the generator must comply with the requirements of paragraph (a) or (b) of this section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of paragraph (a) or (b) of this section for a shipment forwarding such waste to an alternate facility by a designated facility:

(1) The copy of the manifest received by the generator must have the hand written signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility, and

(2) The 35/45/60-day timeframes begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

Note to paragraph (c): The submission to the Director need only be a handwritten 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 Director 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 40 CFR 262.53 and 262.54(e), substitute "Director of the Division of Solid and Hazardous Waste" 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, 2010 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, 2011 ed., are adopted and incorporated by reference with the following exception: substitute "Director of the Division of Solid and Hazardous Waste" for all references made to "Regional Administrator."

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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 Director.

(b) A transporter who has not received an EPA identification number may obtain one by applying to the Director using EPA form 8700-12. Upon receiving the request, the Director 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 mainfest 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.

(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 Director.

R315-6-10. Emergency Controls.

Transporters shall comply with R315-9 in the event of a discharge of hazardous waste.

R315-6-11. Compliance with Department of Transportation Regulations.

Transporters of hazardous waste shall comply with the following pertinent regulations of the U.S. Department of Transportation governing the transportation of hazardous materials for both interstate and intrastate shipments:

(a) 49 CFR 171, General Information Regulations and Definitions;

(b) 49 CFR 172, Hazardous Materials Table and Hazardous Material Communications Regulations;

(c) 49 CFR 173, Shippers - General Requirements for Shipments and Packaging;

(d) 49 CFR 174, Carriage by Rail;

(e) 49 CFR 175, Carriage by Aircraft;

(f) 49 CFR 176, Carriage by Vessel;

(g) 49 CFR 177, Carriage by Public Highway;
(h) 49 CFR 178, Shipping Container Specification; and
(i) 49 CFR 179, Specifications for Tank Cars.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-7-8. General Interim Status Requirements.

8.1 PURPOSE, SCOPE, APPLICABILITY

(a) The purpose of R315-7 is to establish minimum State of Utah standards that define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled.

(b) Except as provided in R315-7-30, which incorporates by reference 40 CFR 265.1080(b), the standards of R315-7 and of R315-8-21, which incorporates by reference 40 CFR 264.552 through 264.554, apply to owners and operators of facilities that treat, store, or dispose of hazardous waste who have fully complied with the requirements of interim status under State or Federal requirements and R315-3-2.1 until either a permit is issued under R315-3 or until applicable R315-7 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010(a) of RCRA or failed to file part A of the permit application as required by R315-3-2.1(d) and (f). These standards apply to all treatment, storage, and disposal of hazardous waste at these facilities after the effective date of these rules, except as specifically provided otherwise in R315-7 or R315-2.

(c) The requirements of R315-7 do not apply to the following:

(1) The owner or operator of a POTW with respect to the treatment or storage of hazardous wastes which are delivered to the POTW;

(2) The owner or operator of a facility approved by the State of Utah to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under R315-7 by R315-2-5;

(3) The owner or operator of a facility managing recyclable materials described in 40 CFR 261.6(a)(2), (3), and (4), which is incorporated by reference in R315-2-6, except to the extent that they are referred to in R315-15 or R315-14-2, which incorporates by reference 40 CFR subpart D, R315-14-5, which incorporates by reference 40 CFR 266 subpart F, and R315-14-6, which incorporates by reference 40 CFR 266 subpart G;

(4) A generator accumulating hazardous waste on-site in compliance with R315-5-3.34, which incorporates by reference 40 CFR 262.34, except to the extent the requirements are included in R315-5-3.34, which incorporates by reference 40 CFR 262.34;

(5) A farmer disposing of waste pesticides from his own use in compliance with R315-5-7;

(6) The owner or operator of a totally enclosed treatment facility, as defined in R315-1;

(7) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in the Table of Treatment Standards for Hazardous Wastes in 40 CFR 268.40 as incorporated by reference at R315-13, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in R315-7-9.8(b);

(8) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.30 at a transfer facility for a period of ten days or less;

(9)(i) Except as provided in R315-7-8(c)(9)(i), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by this section shall comply with all applicable requirements of R315-7-10 and R315-7-11.

(iii) Any person who is covered by R315-7-8(c)(9)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of R315-7 and of R315-3 for those activities.

(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-containing equipment 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 Director 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 Director or the Director's 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 Director 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 Director's receipt of the CQA certification unless the Director 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 Director 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 Director or the Director's 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, 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 Director 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 Director. The report shall include:

(1) Name, address, and telephone number of the owner or operator;

(2) Name, address, and telephone number of the facility;

(3) Date, time, and type of incident, e.g., fire, discharge;

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to the environment or human health, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

R315-7-12. Manifest System, Recordkeeping, and Reporting.

12.1 APPLICABILITY

The rules in R315-7-12 apply to owners and operators of both on-site and off-site facilities, except as provided otherwise in R315-7-8.1. R315-7-12.2, R315-7-12.3, and R315-7-12.7 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, 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).

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 R315-7-12.2(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 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 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

(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 discrepancies 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 discrepancies 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 Director 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, or, the facility shall provide for secure, temporary 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).

(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/Offeror'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 and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(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 facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

(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/Offeror'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), (6), and (8).

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in R315-5-4.42(a)(1).

(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, dated, 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 Director.

(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 Director 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 Director 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 UNMAINFESTED 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 Director 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 Director:

(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 Director may deem necessary to determine compliance with the requirements of R315-7;

(e) As otherwise required by R315-7-26, which incorporates by reference 40 CFR 265.1030 - 265.1035, R315-7-27, which incorporate by reference 40 CFR 265 265.1050 - 265.1064 and R315-7-30, which incorporates by reference 40 CFR 265.1080 - 265.1091.

R315-7-13. Groundwater Monitoring.

13.1 APPLICABILITY

(a) The owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste shall implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as R315-7-8.1 and R315-7-13.1(c) provide otherwise.

(b) Except as R315-7-13.1(c) and (d) provide otherwise, the owner or operator shall install, operate, and maintain a groundwater monitoring system which meets the requirements of R315-7-13.2, and shall comply with R315-7-13.3 - R315-7-13.5. This groundwater monitoring program shall be carried out during the active life of the facility, and for disposal facilities, during the post-closure care period as well.

(c) All or part of the groundwater monitoring sampling and analysis requirements of this section may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells, domestic, industrial, or agricultural, or to surface water. This demonstration shall be in writing, and shall be kept at the facility. This demonstration shall be certified by a qualified geologist or geotechnical engineer and shall establish the following:

(1) The potential for migration of hazardous waste or hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(i) A water balance of precipitation, evapotranspiration, run-off, and infiltration; and

(ii) Unsaturated zone characteristics, i.e., geologic materials, physical properties, and depth to groundwater; and

(2) The potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(i) Saturated zone characteristics, i.e., geologic materials, physical properties, and rate of groundwater flow; and

(ii) The proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes, or knows, that groundwater monitoring of indicator parameters in accordance with R315-7-13.2 and R315-7-13.3 would show statistically significant increases, or decreases in the case of pH, when evaluated under R315-7-13.4(b), he may install, operate, and maintain an alternate groundwater monitoring system, other than the one described in R315-7-13.2 and R315-7-13.3. If the owner or operator decides to use an alternate groundwater monitoring system he shall:

(1) Submit to the Director 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 Director 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 Director 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 Director--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 Director 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 Director 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 Director 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 Director:

(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 Director 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 "Director" for all references to "Administrator" or "Regional Administrator".

(b) Substitute the word "appointee" for "employee."

(c) Substitute "Director" 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 "Director of the Division of Solid and Hazardous Waste" for all references to "Administrator" or "Regional Administrator."

(b) substitute "Director" 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 "Director of the Division of Solid and Hazardous Waste" 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 "Director".

(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 Director when submitting the notice required under R315-7-18.9(b). Within 60 days of receipt of the notification, the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director when issuing the first permit to the facility, except that the Director will not be precluded from requiring installation of a new liner when the Director has reason to believe that any liner installed pursuant to the requirements of R315-7-18.9(a) is leaking.

(f) A surface impoundment shall maintain enough freeboard to prevent overtopping of the dike by overfilling, wave action, or a storm. Except as provided in R315-7-18.2(b), there shall be at least 60 centimeters, two feet, of freeboard.

(g) A freeboard level less than 60 centimeters, two feet, shall be maintained if the owner or operator obtains certification by a qualified engineer that alternate design features or operating plans will, to the best of his knowledge and opinion, prevent overtopping of the dike. The certification, along with written identification of alternate design features or operating plans preventing overtopping, shall be maintained at the facility.

(h) Surface impoundments that are newly subject to R315-7-18 due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with R315-7-18.9(a), (c) and (d) not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under R315-13, which incorporates by Reference 40 CFR 268, or the granting of an extension to the effective date of a prohibition pursuant to 40 CFR 268.5, within this 48-month period.

18.10 RESPONSE ACTIONS

(a) The owner or operator of surface impoundment units subject to R315-7-18.9(a) shall submit a response action plan to the Director 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 Director in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Director 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 Director 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 Director 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 Director when submitting the notice required under R315-7-19.9. Within 60 days of receipt of the notification, the Director 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 Director 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 Director 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 Director 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 Director 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 Director in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Director 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 Director 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 Director 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 Director. The growth of food chain crops at a facility which has never before been used for this purpose is a significant change in process under R315-3. Owners or operators of these land treatment facilities who propose to grow food chain crops shall comply with R315-3.

(b)(1) Food chain crops shall not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury, or other constituents identified under R315-7-20.3(b):

(i) Will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals, e.g., by grazing; or

(ii) Will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by R315-7-20.4(b)(1) shall be kept at the facility and shall, at a minimum:

(i) Be based on tests for the specific waste and application rates being used at the facility; and

(ii) Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods and statistical procedures.

(c) Food chain crops shall not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of R315-7-20.4(c)(1)(i) through (iii) or all requirements of R315-7-20.4(c)(2)(i) through (iv) are met.

(1)(i) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentration of 2. mg/kg, dry weight, or less.

(ii) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land use for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

TABLE

Time Period	Annual Cd Application Rate (kg/ha)
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(iii) The cumulative application of cadmium from waste does not exceed the levels in either paragraph (A) or (B) below:

(A)

TABLE

Soil cation exchange capacity (meq/100g)	MAXIMUM CUMULATIVE APPLICATION (kg/ha) Background soil pH less than 6.5	Background soil pH greater than 6.5
Less than 5	5	5
5-15	5	10
Greater than 15	5	20

(B) For soils with a background pH of less than 6.5, the cumulative cadmium application rate does not exceed the levels below: Provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

TABLE

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha)
Less than 5	5
5 to 15	10
Greater than 15	20

(2)(i) The only food chain crop produced is animal feed.

(ii) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measure to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses.

(iv) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops shall not be grown, except in compliance with R315-7-20.7(c)(2).

As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, if an owner or operator grows food chain crops on his land treatment facility, he shall place the information developed in this section in the operating record of the facility.

20.5 UNSATURATED ZONE, ZONE OF AERATION, MONITORING

(a) The owner or operator shall have in writing, and shall implement, an unsaturated zone monitoring plan which is designed to:

(1) Detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility; and

(2) Provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring shall be conducted before or in conjunction with the monitoring required under R315-7-20.5(a)(1).

(b) The unsaturated zone monitoring plan shall include, at a minimum:

(1) Soil monitoring using soil cores; and

(2) Soil-pore water monitoring using devices such as lysimeters.

(c) To comply with R315-7-20.5(a)(1), the owner or operator shall demonstrate in his unsaturated zone monitoring plan that:

(1) The depth at which soil and soil-pore water samples are to be taken is below the depth to which the waste is incorporated into the soil;

(2) The number of soil and soil-pore water samples to be taken is based on the variability of:

(i) The hazardous waste constituents, as identified in R315-7-20.3(a) and (b), in the waste and in the soil; and

(ii) The soil type(s); and

(3) The frequency and timing of soil and soil-pore water sampling is based on the frequency, time, and rate of waste application, proximity to groundwater, and soil permeability.

(d) The owner or operator shall keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(e) The owner or operator shall analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis under R315-7-20.3(a) and (b).

All data and information developed by the owner or operator under this section shall be placed in the operating record of the facility.

20.6 RECORDKEEPING

The owner or operator of a land treatment facility shall keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility, in the operating record required in R315-7-12.4, which incorporates by reference 40 CFR 265.73.

20.7 CLOSURE AND POST-CLOSURE CARE

(a) In the closure and post-closure plan under R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, the owner or operator shall address the following objectives and indicate how they will be achieved:

(1) Control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(2) Control of the release of contaminated run-off from the facility into surface water;

(3) Control of the release of airborne particulate contaminants caused by wind erosion; and

(4) Compliance with R315-7-20.4 concerning the growth of food-chain crops.

(b) The owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of R315-7-20.7(a):

(1) Type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(2) The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration, e.g., proximity to groundwater, surface water and drinking water sources;

(4) Climate, including amount, frequency, and pH of precipitation;

(5) Geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) Unsaturated zone monitoring information obtained under R315-7-20.5; and

(7) Type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator shall consider at least the following methods in addressing the closure and post-closure care objectives of R315-7-20.7(a):

(1) Removal of contaminated soils;

(2) Placement of a final cover, considering:

(i) Functions of the cover, e.g., infiltration control, erosion and run-off control and wind erosion control; and

(ii) Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and

(3) Monitoring of groundwater.

(d) In addition to the requirements of R315-7-14 which incorporates by reference 40 CFR 265.110 - 265.120, during the closure period the owner or operator of a land treatment facility shall:

(1) Continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) Maintain the run-on control system required under R315-7-20.2(b);

(3) Maintain the run-off management system required under R315-7-20.2(c); and

(4) Control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, when closure is completed the owner or operator may submit to the Director, 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 Director 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 Director 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 Director when issuing the first permit to the facility, except that the Director will not be precluded from requiring installation of a new liner when the Director has reason to believe that any liner installed pursuant to the requirements of R315-7-21.10(a) is leaking.

(f) The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 25-year storm.

(g) The owner or operator shall design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(h) Collection and holding facilities, e.g., tanks or basins, associated with run-on and run-off control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind shall cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

As required by R315-7-9.4, which incorporates by reference 40 CFR 265.13, the waste analysis plan shall include analysis needed to comply with R315-7-21.5 and R315-7-21.6. As required by R315-7-12.4, which incorporates by reference 40 CFR 265.73, the owner or operator shall place the results of these analyses in the operating record.

21.3 SURVEYING AND RECORDKEEPING

The owner or operator of a landfill shall maintain the following items in the operating record required in R315-7-12.4, which incorporates by reference 40 CFR 265.73:

(a) On a map, the exact location and dimension, including depth, of each cell with respect to permanently surveyed benchmarks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

21.4 CLOSURE AND POST-CLOSURE CARE

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator shall comply with all post-closure requirements contained in R315-7-14, which incorporates by reference 40 CFR 265.110 - 265.120, including maintenance and monitoring throughout the post-closure care period. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events.

(2) Maintain and monitor the leak detection system in accordance with R315-8-14.2(c)(3)(iv) and (4) and R315-7-21.12(b), and comply with all other applicable leak detection system requirements of R315-7;

(3) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of R315-7-13;

(4) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(5) Protect and maintain surveyed benchmarks used in complying with R315-7-21.3.

21.5 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Except as provided in R315-7-21.5(b) and in 7.21.9, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) and (f).

(2) Section R315-7-9.8 is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in R315-13, which incorporates by reference 40 CFR 268 subpart D, ignitable wastes in containers may be landfilled without meeting the requirements of R315-7-21.5(a), provided that the wastes are disposed of in a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes shall be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; shall be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and shall not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

21.6 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials,

see 40 CFR 265, Appendix V for examples, shall not be placed in the same landfill cell, unless R315-7-9.8(b) is complied with.

21.7 SPECIAL REQUIREMENTS FOR BULK AND CONTAINERIZED LIQUIDS

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if;

(1) The landfill has a liner and leachate collection and removal system that meets the requirements of R315-8-14.2(a); or

(2) Before disposal, the liquid waste or waste containing free liquids is treated or stabilized chemically or physically, e.g., by mixing with a sorbent solid, so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited.

(c) Containers holding free liquids must not be placed in a landfill unless:

(1) All free-standing liquid

(i) has been removed by decanting, or other methods,

(ii) has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) had been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in R315-7-21.8 and is disposed of in accordance with R315-7-21.9.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095, Paint Filter Liquids Test as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." EPA Publication No. SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(e) The date of compliance with R315-7-21.7(a) is November 19, 1981. The date for compliance with R315-7-21.7(c) is March 22, 1982.

(f) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in R315-7-21.7(f)(1); materials that pass one of the tests in R315-7-21.7(f)(2); or materials that are determined by EPA to be nonbiodegradable through the R315-2-16, which incorporates by reference 40 CFR 260.22, petition process.

(1) Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon, e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon; or

(ii) High molecular weight synthetic polymers, e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polysobutylene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers. This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria.

(iii) The sorbent material is determined to be non-biodegradable under OECD test 301B, CO2 Evolution, Modified Sturm Test.

(g) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Director 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 Director when submitting the notice required under R315-7-21.2(b). Within 60 days of receipt of the notification, the Director 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 Director 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 Director 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 Director 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 Director 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 Director in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Director 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 Director 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 Director 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 Director 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 Director 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 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 Director that they can meet the performance standards of R315-8-15 when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify an incinerator:

(1) The owner of operator will submit an application to the Director 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 Director 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 Director will accept comment on the tentative decision for 60 days. The Director also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Director 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 Director 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 Director 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 Director 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 Director will accept comment on the tentative decision for 60 days. The Director also may hold a public hearing upon request or at their discretion.

(3) After the close of the public comment period, the Director 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 "Director" 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 "Director" 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 "Director" 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 "Director of the Division of Solid and Hazardous Waste" for all federal regulation references made to "Regional Administrator."

R315-7-30. Air Emission Standards for Tanks, Surface Impoundments, and Containers.

The requirements as found in 40 CFR subpart CC, sections 265.1080 through 265.1091, 1998 ed., as amended by as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Director" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste
April 25, 2013 19-6-105
Notice of Continuation July 13, 2011 19-6-106

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-containing equipment 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 Director 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 Director 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 Director in writing at least four weeks in advance of the expected date of arrival of these shipments at the facility. A notice of subsequent shipments of the same waste from the same foreign source is not required.

(2) The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to R315-5-8, which incorporates by reference 40 CFR 262, subpart H, shall provide a copy of the tracking document bearing all required signatures to the notifier, to the Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah, 84114-4880; Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document shall be maintained at the facility for at least three years.

(b) An owner or operator of a facility that receives hazardous waste from off-site, except when the owner or operator is also the generator, shall inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. A copy of this written notice shall be retained by the owner or operator as part of the operating record of waste received.

(c) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements of R315-8 and R315-3. An owner's or operator's failure to notify the new owner or operator of the requirements of R315-8 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

2.4 GENERAL WASTE ANALYSIS

The requirements as found in 40 CFR 264.13, 1996 ed., are adopted and incorporated by reference.

2.5 SECURITY

(a) A facility owner or operator shall prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portion of his facility, unless he can demonstrate to the Director

that:

(1) Physical contact with the waste structures, or equipment within the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(2) Disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause a violation of the requirements of R315-8-2.5.

An owner or operator who wishes to make the demonstration referred to above shall do so with the part B permit application.

(b) Unless the owner or operator has made a successful demonstration under R315-8-2.5(a)(1) and (a)(2), a facility shall have:

(1) A 24-hour surveillance system, e.g., television monitoring or surveillance by guards or facility personnel, which continuously monitors and controls entry onto the active portion of the facility; or

(2)(i) An artificial or natural barrier, e.g., a fence in good repair or a fence combined with a cliff, which completely surrounds the active portion of the facility; and

(ii) A means to control entry at all times, through gates or other entrances to the active portion of the facility, e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility. The requirements of R315-8-2.5(b) are satisfied if the facility or plant within which the active portion is located itself has a surveillance system, or a barrier and a means to control entry, which complies with the requirements of R315-8-2.5(b)(1) or (2).

(c) Unless the owner or operator has made a successful demonstration under R315-8-2.5(a)(1) and (a)(2), a sign with the legend, "Danger - Unauthorized Personnel Keep Out", shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger - Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion is potentially dangerous. Owners or operators are encouraged to also describe in the sign the type of hazard, e.g., hazardous waste, flammable wastes, etc. contained within the active portion of the facility. See R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for discussion of security requirements during the post-closure care period.

2.6 GENERAL INSPECTION REQUIREMENTS

(a) Facility owners or operators shall inspect their facilities for malfunctions and deterioration, operator errors, and discharges, which may be causing or may lead to release of hazardous waste constituents to the environment or pose a threat to human health. These inspections shall be conducted frequently enough to identify problems in time to take corrective action before they harm human health or the environment.

(b)(1) Facility owners or operators shall develop and follow a written schedule for inspecting monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment, such as dikes and sump pumps, that are important to preventing, detecting, or responding to environmental or human health hazards.

(2) The schedule shall be kept at the facility.

(3) The schedule shall identify the types of problems, e.g., malfunctions or deterioration, which are to be looked for during the inspection, for example, inoperative sump pump, leaking fitting, eroding dike, etc.

(4) The frequency of the inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, shall be inspected daily when they are in use. At a minimum, the inspection schedule shall include the items and frequencies called for in R315-8-9.5, R315-8-10, which incorporates by reference 40 CFR 264.190 - 264.199, R315-8-11.3, R315-8-12.3, R315-8-13.6, R315-8-14.3, R315-8-15.7, R315-8-16, which incorporates by reference 40 CFR 264.600 - 264.603, R315-8-17, which incorporates by reference 40 CFR 264.1030 - 264.1036, R315-8-18, which incorporates by reference 40 CFR 264.1050 - 264.1065, and R315-8-22, which incorporates by reference 40 CFR 264.1083 through 264.1089.

(c) The owner or operator shall make any repairs, or take other remedial action, on a time schedule which ensures that any deterioration or malfunction discovered does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

(d) The owner or operator shall keep records of inspections in an inspection log or summary. These records shall be retained for at least three years. At a minimum, these records shall include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs made or remedial actions taken.

2.7 PERSONNEL TRAINING

(a)(1) Facility personnel shall successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section and that includes all the elements described in the document required under R315-8-2.7(d)(3).

(2) This program shall be directed by a person trained in hazardous waste management procedures, and shall include instruction which teaches facility personnel hazardous waste management procedures, including contingency plan implementation relevant to the position in which they are employed.

(3) At a minimum, the training program shall be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including, but not necessarily limited to, the following, where applicable:

(i) Procedures for inspection, use, repair, and replacement of facility emergency and monitoring equipment;

(ii) Communications or alarm systems;

(iii) Key parameters for automatic waste feed cut-off systems;

(iv) Response to fires or explosions;

(v) Response to groundwater contamination incidents; and

(vi) Shutdown of operations.

(b) Facility personnel shall successfully complete the program required in R315-8-2.7(a) within six months after the effective date of these rules or six months after the date of employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these rules shall not work in unsupervised positions until they have completed the training requirements of R315-8-2.7(a).

(c) Facility personnel shall take part in an annual review of their initial training in both contingency procedures and the hazardous waste management procedures relevant to the positions in which they are employed.

(d) Owners or operators of facilities shall maintain the following documents and records and make them available upon request:

(1) The job title for each position at the facility related to

hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under R315-8-2.7(d)(1). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but shall include the requisite skill, education, or other qualifications and duties of employees assigned to each position;

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under R315-8-2.7(d)(1);

(4) Records that document that the training or job experience required under R315-8-2.7(a), (b), and (c) has been given to, and completed by, facility personnel.

(e) Training records on current employees shall be maintained until closure of the facility; training records on former employees shall be retained for at least three years from the date the employee last worked at the facility. Employee training records may accompany personnel transferred within the same company.

2.8 GENERAL REQUIREMENTS FOR IGNITABLE, REACTIVE, OR INCOMPATIBLE WASTES

(a) The owner or operator shall take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes. These waste shall be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks, static, electrical, or mechanical, spontaneous ignition, e.g., from heat-producing chemical reactions, and radiant heat. While ignitable or reactive waste is being handled, the owner or operator shall confine smoking and open flame to specially designated locations. "No Smoking" signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(b) Where specifically required by other sections of R315-8, the owner or operator of a facility that treats, stores or disposes ignitable or reactive waste, or mixes incompatible waste or incompatible wastes and other materials, shall take precautions to prevent reactions which:

(1) Generate extreme heat or pressure, fire or explosion, or violent reactions;

(2) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health or the environment;

(3) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(4) Damage the structural integrity of the device or facility;

(5) Through other like means threaten human health or the environment.

(c) When required to comply with R315-8-2.8, the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, date from trial tests, e.g., bench scale or pilot scale tests, waste analyses as specified in R315-8-2.4, which incorporates by reference 40 CFR 264.13, or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

2.9 LOCATION STANDARDS

(a) Seismic considerations.

(1) Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted shall not be located within 61 meters (200 feet) of a fault which has had displacement in Holocene time. For definition of terms used in this section see R315-1. Procedures for demonstrating compliance with this standard in part B of the permit application are specified in R315-3 specifically in R315-3-2.5. Facilities which are located in political jurisdictions other than those listed in R315-50-11 are assumed to be in compliance with this requirement.

(b) Floodplains.

(1) A facility located in a 100-year floodplain shall be designed, constructed, operated and maintained to prevent washout of any hazardous waste by a 100-year flood, unless the owner or operator can demonstrate to the Director'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 Director 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 Director by certified mail or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of R315-8-11.2(c) or (d), R315-8-12.2(c) or (d), or R315-8-14.2(c) or (d); and the procedure in R315-3-3.1(l)(2)(ii) has been completed. Documentation supporting the CQA officer's certification shall be furnished to the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director. The report shall include:
(1) Name, address, and telephone number of the owner or operator;
(2) Name, address, and telephone number of the facility;
(3) Date, time, and type of incident, e.g., fire, discharge;
(4) Name and quantity of material(s) involved;
(5) The extent of injuries, if any;
(6) An assessment of actual or potential hazards to the environment or human health, where this is applicable; and
(7) Estimated quantity and disposition of recovered material that resulted from the incident.

R315-8-5. Manifest System, Recordkeeping, and Reporting.

5.1 APPLICABILITY

The rules in 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.

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 discrepancies (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 Director 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, or, the facility shall provide for secure, temporary 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).

(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/Offeror'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 and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

(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 facility's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the facility's site address, then write the facility's site address in the designated space for Item 5 of the new manifest.

(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/Offeror'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), (6), and (8).

(8) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in R315-5-4.42(a)(1).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in R315-2-7(b) after it has signed, dated, 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 Director 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 Director.

(c) All records, including plans, required under R315-8 shall be furnished upon request, and made available at all reasonable times for inspection.

5.6 BIENNIAL REPORT

Owners or operators of facilities that treat, store, or dispose of hazardous waste shall prepare and submit a single copy of an biennial report to the Director 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 Director 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 Director:

(a) Discharges, fires, and explosions as specified in R315-8-4.7(j);

(b) Upon its request, all information as the Director 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 Director.

(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 Director 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 Director 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 Director finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit, including the closure period and the post-closure care period specified under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. This demonstration shall be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator shall base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a waste pile in compliance with R315-8-12.1(c).

(c) The regulations under this section apply during the active life of the regulated unit, including the closure period. After closure of the regulated unit, the regulations in this section:

(1) Do not apply if the waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) Apply during the post-closure care period under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264-120, if the owner or operator is conducting a detection monitoring program under R315-8-6.9;

(3) Apply during the compliance period under R315-8-6.7 the owner is conducting a compliance monitoring program under R315-8-6.10 or a corrective action program under R315-8-6.11.

(d) Requirements in this section may apply to miscellaneous units when necessary to comply with R315-8-24, which incorporates by reference 40 CFR 264.601 - 264.603.

(e) The regulations of R315-8-6 apply to all owners and operators subject to the requirements of R315-3-1.1(e)(7), when the Director issues either a post-closure permit or an enforceable document, as defined in R315-3-1.1(e)(7), at the facility. When the Director issues an enforceable document, references in R315-8-6 to "in the permit" mean "in the enforceable document."

(f) The Director 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 Director 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 Director will specify in the facility permit the specific elements of the monitoring and response program. The Director 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 Director will consider the potential adverse effects on human health and the environment that might occur before final administrative action on a permit modification application to incorporate this type of a program could be taken.

6.3 GROUNDWATER PROTECTION STANDARD

The owner or operator shall comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under R315-8-6.4 that are detected in the groundwater from a regulated unit do not exceed the concentration limits under R315-8-6.5 in the uppermost aquifer underlaying the waste management area beyond the point of compliance under R315-8-6.6 during the compliance period under R315-8-6.7. The Director 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 Director will specify in the facility permit the hazardous constituents to which the groundwater protection standard of R315-8-6.3 applies. Hazardous constituents are constituents identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII, that have been detected in groundwater in the uppermost aquifer underlaying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Director has excluded them under paragraph 8.6.4(b).

(b) The Director 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 Director 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 Director will consider any identification of underground sources of drinking water.

6.5 CONCENTRATION LIMITS

(a) The Director will specify in the facility permit concentration limits in the groundwater for hazardous constituents established under R315-8-6.4. The concentration of a hazardous constituent:

(1) Shall not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or

(2) For any of the constituents listed in Table 1, shall not exceed the respective value given in that Table if the background level of the constituent is below the value given in Table 1; or

TABLE 1
Maximum Concentration of Constituents for Groundwater Protection

CONSTITUENT		MAXIMUM CONCENTRATION(1)
Arsenic		0.05
Barium		1.0
Cadmium		0.01
Chromium		0.05
Lead		0.05
Mercury		0.002
Selenium		0.01
Silver		0.05
Endrin	(1,2,3,4,10,10-hexachloro-1, 7-epoxy-1,4,4a,5,6,7,8, 9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane	(1,2,3,4,5,6,-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor	(1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene	(C10H10C18, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D	(2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex	(2,4,5-Trichlorophenoxypropionic acid)	0.01

(1)Milligrams per liter

(3) Shall not exceed an alternate limit established by the Director under R315-8-6.5(b).

(b) The Director 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 Director will consider the following factors:

(1) Potential adverse effects on groundwater quality, considering:

(i) The physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of groundwater and the direction of groundwater flow;

(iv) The proximity and withdrawal rates of groundwater users;

(v) The current and future uses of groundwater in the area;

(vi) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects; and

(2) Potential adverse effects on hydraulically connected surface water quality, considering:

(i) The volume and physical and chemical characteristics of the waste in the regulated unit;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of groundwater, and the direction of groundwater flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the regulated unit to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

(c) In making any determination under R315-8-6.5(b) about the use of groundwater in the area around the facility the Director will consider any identification of underground sources of drinking water.

6.6 POINT OF COMPLIANCE

(a) The Director will specify in the facility permit the point of compliance at which the groundwater protection standard of R315-8-6.3 applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlaying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

6.7 COMPLIANCE PERIOD

(a) The Director 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 Director. 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 Director.

(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 Director, 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

Director. 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 Director.

(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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director:

(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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director of this finding in writing within seven days. The notification shall indicate which concentration limits have been exceeded;

(2) Submit to the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 "Director" 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 "Director" for all references to "Administrator" or "Regional Administrator".

(b) substitute " Director " 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 "Director" for all references to "Administrator" or "Regional Administrator" found in subpart J except paragraph 264.193(g) which should have "Regional Administrator" replaced by "Director ".

(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 Director 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 Director will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility".

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-11.2(a)(1)-(3).

(2) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-1} cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-4} m^2sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(3) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(4) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Director may approve alternative design or operating practices to those specified in R315-8-11.2(c) if the owner or operator demonstrates to the Director 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 Director 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 Director 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 Director 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 Director 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 Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Director 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 Director 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 Director 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 Director in writing of the exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Director 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 Director 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 Director 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 Director 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 Director 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 Director will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10 under "existing facility".

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-12.2(a)(1)(i), (ii), and (iii).

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the waste pile during the active life and post-closure care period. The Director will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall comply with R315-8-12.2(c)(3)(iii) and (iv).

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

(ii) Constructed of granular drainage materials with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches, 30.5 cm, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more:

(iii) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the waste pile;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of groundwater.

(d) The Director may approve alternative design or operating practices to those specified in R315-8-12.2(c) if the owner or operator demonstrates to the Director 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 Director 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 Director will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

12.3 MONITORING AND INSPECTION

(a) During construction or installation, liners, except in the case of existing portions of piles exempt from R315-8-12.2(a), and cover systems, e.g., membranes, sheets, or coatings, shall be inspected for uniformity, damage, and imperfections, e.g., holes, cracks, thin spots, or foreign materials. Immediately after construction or installation:

(1) Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based and admixed liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.

(b) While a waste pile is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions, or improper operation of run-on and run-off control systems;

(2) Proper functioning of wind dispersal control systems, where present; and

(3) The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

(c) An owner or operator required to have a leak detection system under R315-8-12.2(c) shall record the amount of liquids removed from each leak detection system sump at least once each week during the active life and closure period.

12.4 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

Ignitable or reactive waste shall not be placed in a waste pile unless the waste and waste pile satisfy all applicable requirements of R315-13, which incorporates by reference 40 CFR 268, R315-50-12, which incorporates by reference 40 CFR 268 Appendix I, and R315-50-13, which incorporates by reference 40 CFR 268 Appendix II, and:

(a) The waste is treated, rendered, or mixed before or immediately after placement in the pile so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) R315-8-2.8(b) is complied with; or

(b) The waste is managed in a way that it is protected from any material or condition which may cause it to ignite or react.

12.5 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

(a) Incompatible wastes, or incompatible wastes and materials shall not be placed in the same pile, unless R315-8-2.8(b) is complied with.

(b) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in containers, other piles, open tanks, or surface impoundments shall be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(c) Hazardous waste shall not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with R315-8-2.8(b).

12.6 CLOSURE AND POST-CLOSURE CARE

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system compoundments, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless R315-2-3(d) applies.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in R315-8-12.6(a), the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120.

(c)(1) The owner or operator of a waste pile that does not comply with the liner requirements of R315-8-12.2(a)(1), and is not exempt from them in accordance with R315-8-12.1(c) or R315-8-12.2(b) shall:

(i) Include in the closure plan for the pile under R315-8-7.3 both a plan for complying with R315-8-12.6(a) and a contingent plan for complying with R315-8-12.6(b) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, for complying with R315-8-12.6(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under R315-8-8, which incorporates by reference 40 CFR 264.140 - 264.151, for closure and post-closure care of a pile subject to this paragraph shall include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under R315-8-12.6(a).

12.7 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTES F020, F021, F022, F023, F026, AND F027

(a) Hazardous Wastes F020, F021, F022, F023, F026 and F027 shall not be placed in waste piles that are not enclosed, as defined in R315-8-12.1(c), unless the owner or operator operates the waste pile in accordance with a management plan for these wastes that is approved by the Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere:

(2) The attenuative properties of underlaying and surrounding soils or other materials:

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Director 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 Director 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 Director 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 Director in writing of the exceedance within seven days of the determination;

(2) Submit a preliminary written assessment to the Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director will specify in the facility plan the specific food-chain crops which may be grown.

(a)(1) The owner or operator shall demonstrate that there is no substantial risk to human health caused by the growth of the crops in or on the treatment zone by demonstrating, prior to the planting of the crops, that hazardous constituents other than cadmium:

(i) Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food-chain animals, e.g., by grazing; or

(ii) Will not occur in greater concentrations in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(2) The owner or operator shall make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under this paragraph, the owner or operator may use field tests, greenhouse studies, available data, or, in the case of existing units, operating data, and shall:

(i) Base the demonstration on conditions similar to those present in the treatment zone, including soil characteristics, e.g., pH, cation exchange capacity, specific wastes, application rates, application methods, and crops to be grown; and

(ii) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he shall obtain a permit for conducting these activities.

(b) The owner or operator shall comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(1)(i) The pH of the waste and soil mixture shall be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of two mg/kg, dry weight, or less;

(ii) The annual application of cadmium from waste shall not exceed 0.5 kilograms per hectare, kg/ha, on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food-chain crops, and annual cadmium application rate shall not exceed:

TABLE

Time Period	Annual Cd Application Rate (kilograms per hectare)
Present to June 30, 1984	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987	0.5

(iii) The cumulative application of cadmium from waste shall not exceed five kg/ha if the waste and soil mixture has a pH less than 6.5; and

(iv) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste shall not exceed: five kg/ha if soil cation exchange capacity (CEC) is less than five meq/100g; 10 kg/ha if soil CEC is 5-15 meq/100g; and 20 kg/ha if soil CEC is greater than 15 meq/100g; or

(2)(i) Animal feed shall be the only food-chain crop produced;

(ii) The pH of the waste and soil mixture shall be 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level shall be maintained whenever food-chain crops are grown;

(iii) There shall be an operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan shall describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food-chain, which may result from alternative land uses; and

(iv) Future property owners shall be notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food-chain crops shall not be grown except in compliance with R315-8-13.5(b)(2).

13.6 UNSATURATED ZONE MONITORING

An owner or operator subject to this section shall establish an unsaturated zone monitoring program to discharge the following responsibilities:

(a) The owner or operator shall monitor the soil and soil-pore liquid to determine whether hazardous constituents migrate out of the treatment zone.

(1) The Director 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 Director 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 Director will establish PHCs if the Director finds, 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director 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 Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements of these rules. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Director 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 Director 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 Director 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 Director will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(4) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 shall install two or more liners and a leachate collection and removal system above and between such liners. "Construction commences" is as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, under "existing facility."

(1)(i) The liner system shall include:

(A) A top liner designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into such liner during the active life and post-closure care period; and

(B) A composite bottom liner, consisting of at least two components. The upper component shall be designed and constructed of materials, e.g., a geomembrane, to prevent the migration of hazardous constituents into this component during the active life and post-closure care period. The lower component shall be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component shall be constructed of at least three feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

(ii) The liners shall comply with R315-8-14.2(a)(1)(i), (ii), and (iii).

(2) The leachate collection and removal system immediately above the top liner shall be designed, constructed, operated, and maintained to collect and remove leachate from the landfill during the active life and post-closure care period. The Director will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 cm, one foot. The leachate collection and removal system shall comply with R315-8-14.2(c)(3)(iii) and (iv).

(3) The leachate collection and removal system between the liners, and immediately above the bottom composite liner in the case of multiple leachate collection and removal systems, is also a leak detection system. This leak detection system shall be capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to waste or leachate during the active life and post-closure care period. The requirements for a leak detection system in this paragraph are satisfied by installation of a system that is, at a minimum:

(i) Constructed with a bottom slope of one percent or more;

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

(iii) Constructed of materials that are chemically resistant to the waste managed in the landfill and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and equipment used at the landfill;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(4) The owner or operator shall collect and remove pumpable liquids in the leak detection system sumps to minimize the head on the bottom liner.

(5) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Director may approve alternative design or operating practices to those specified in R315-8-14.2(c) if the owner or operator demonstrates to the Director 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 Director 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 Director 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 Director based on pump activation level, sump dimensions, and level that avoids backup into the drainage layer and minimizes head in the sump.

14.4 SURVEYING AND RECORDKEEPING

The owner or operator of a landfill shall maintain the following items in the operating record required under R315-8-5.3, which incorporates by reference 40 CFR 264.73:

(a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed bench marks; and

(b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

14.5 CLOSURE AND POST-CLOSURE CARE

(a) At final closure of the landfill or upon closure of any cell, the owner or operator shall cover the landfill or cell with a final cover designed and constructed to:

(1) Provide long-term minimization of migration of liquids through the closed landfill;

(2) Function with minimum maintenance;

(3) Promote drainage and minimize erosion or abrasion of the cover;

(4) Accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator shall comply with all post-closure requirements contained under R315-8-9.8 and R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120, including maintenance and monitoring throughout the post-closure care period, specified in the permit, under R315-8-7, which incorporates by reference 40 CFR 264.110 - 264.120. The owner or operator shall:

(1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) Continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) Maintain and monitor the leak detection system in accordance with R315-8-14.2(c)(3)(iv) and (4) and R315-8-14.3(c), and comply with all other applicable leak detection system requirements of R315-8;

(4) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of these rules;

(5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) Protect and maintain surveyed bench marks used in complying with R315-8-14.4.

14.6 SPECIAL REQUIREMENTS FOR IGNITABLE OR REACTIVE WASTE

(a) Except as provided in R315-8-14.6(b), and in R315-8-14.10, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of R315-13, R315-50-12, and R315-50-13, which incorporate by reference 40 CFR 268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under R315-2-9(d) or (f); and

(2) R315-8-2.8(b) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in R315-13, which incorporates by reference 40 CFR 268 subpart D, ignitable wastes in containers may be landfilled without meeting the requirements of R315-8-14.6(a), provided that the wastes are disposed of in a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, ignitable wastes shall be disposed of in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; shall be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and shall not be disposed of in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

14.7 SPECIAL REQUIREMENTS FOR INCOMPATIBLE WASTES

Incompatible wastes, or incompatible wastes and materials shall not be placed in the same landfill cell, unless R315-8-2.8(b) is complied with.

14.8 SPECIAL REQUIREMENTS FOR LIQUID WASTE

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill, prior to May 8, 1985, if:

(1) The landfill has a liner and leachate collection and removal system that meet the requirements of R315-8-14.2(a); or

(2) Before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically, e.g., by mixing with a sorbent solid, so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids, whether or not sorbents have been added, in any landfill is prohibited.

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test shall be used: Method 9095, Paint Filter Liquids Test, as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods." EPA Publication No. SW-846 as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(d) Containers holding free liquids shall not be placed in a landfill unless:

(1) All free-standing liquid:

(i) Has been removed by decanting, or other methods;

(ii) Has been mixed with sorbent or solidified so that free-standing liquid is no longer observed; or

(iii) Has been otherwise eliminated; or

(2) The container is very small, such as an ampule; or

(3) The container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(4) The container is a lab pack as defined in R315-8-14.10, and is disposed of in accordance with R315-8-14.10.

(e) Sorbents used to treat free liquids to be disposed of in landfills shall be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in R315-8-14.8(e)(1); materials that pass one of the tests in R315-8-14.8(e)(2); or materials that are determined by EPA to be nonbiodegradable through the R315-2-16, which incorporates by reference 40 CFR 260.22, petition process.

(1) Nonbiodegradable sorbents.

(i) Inorganic minerals, other inorganic materials, and elemental carbon, e.g., aluminosilicates, clays, smectites, Fuller's earth, bentonite, calcium bentonite, montmorillonite, calcined montmorillonite, kaolinite, micas (illite), vermiculites, zeolites; calcium carbonate (organic free limestone); oxides/hydroxides, alumina, lime, silica (sand), diatomaceous earth; perlite (volcanic glass); expanded volcanic rock; volcanic ash; cement kiln dust; fly ash; rice hull ash; activated charcoal/activated carbon; or

(ii) High molecular weight synthetic polymers (e.g., polyethylene, high density polyethylene (HDPE), polypropylene, polystyrene, polyurethane, polyacrylate, polynorborene, polyisobutylene, ground synthetic rubber, cross-linked allylstyrene and tertiary butyl copolymers). This does not include polymers derived from biological material or polymers specifically designed to be degradable; or

(iii) Mixtures of these nonbiodegradable materials.

(2) Tests for nonbiodegradable sorbents.

(i) The sorbent material is determined to be nonbiodegradable under ASTM Method G21-70 (1984a)-Standard Practice for Determining Resistance of Synthetic Polymer Materials to Fungi; or

(ii) The sorbent material is determined to be nonbiodegradable under ASTM Method G22-76 (1984b)-Standard Practice for Determining Resistance of Plastics to Bacteria; or

(iii) The sorbent material is determined to be non-biodegradable under the Organization for Economic Cooperation and Development (OECD) test 301B, CO_2 Evolution, Modified Sturm Test.

(f) Effective November 8, 1985, the landfill placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of the landfill demonstrates to the Director 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 Director pursuant to the standards set out in this paragraph, and in accord with all other applicable requirements. The factors to be considered are:

(1) The volume, physical and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlaying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring requirements.

(b) The Director 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 Director 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 Director 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 Director in writing of the exceedence within seven days of the determination;

(2) Submit a preliminary written assessment to the Director 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 Director 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 Director 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), through R315-8-15.1(b)(5) 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 Director 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 R307-214-2, 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.

(5) The particulate matter standard of R315-8-15.4(b) remains in effect for incinerators that elect to comply with the alternative to the articulate matter standard of R307-214-2(39), which incorporates by reference 40 CFR 63.1206(b)(14) and 63.1219(e).

(c) After consideration of the waste analysis included with

part B of the permit application, the Director, 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 Director 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 Director 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 Director finds that the waste will pose a threat to human health and the environment when burned in an incinerator.

(e) The owner or operator of an incinerator may conduct trial burns subject only to the requirements of R315-3-6.3.

15.2 WASTE ANALYSIS

(a) As a portion of the trial burn plan required by R315-3-6.3 or with part B of the permit the owner or operator shall have included an analysis of the waste feed sufficient to provide all information required by R315-3-6.3(b) or R315-3-2.10. Owners or operators of new hazardous waste incinerators shall provide the information required by R315-3-6.3(c) or R315-3-2.10 to the greatest extent possible.

(b) Throughout normal operation the owner or operator shall conduct sufficient waste analysis to verify that waste feed to the incinerator is within the physical and chemical composition limits specified in his permit, R315-8-15.6.

15.3 PRINCIPAL ORGANIC HAZARDOUS CONSTITUENTS (POHCS)

(a) Principal Organic Hazardous Constituents (POHCs) in the waste feed shall be treated to the extent required by the performance standard of R315-8-15.4.

(b)(1) One or more POHCs will be specified in the facility's permit, from among these constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII, for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass in the waste feed, considering the results of waste analyses and trial burns or alternative data submitted with part B of the permit. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs. Constituents are more likely to be designated as POHCs if they are present in large quantities or concentrations in the waste.

(2) Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified R315-3-6.3 for obtaining trial burn permits.

15.4 PERFORMANCE STANDARDS

An incinerator burning hazardous waste shall be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under R315-8-15.6, it will meet the following performance standards:

(a)(1) An incinerator burning hazardous waste shall achieve a destruction and removal efficiency (DRE) of 99.99% for each principal organic hazardous constituent (POHC) designated, R315-8-15.3, in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$DRE = (W_{in} - W_{out}) / W_{in} \times 100\%$

Where:

W_{in} = Mass feed rate of one principal organic hazardous constituent (POHC) in the waste stream feeding the incinerator, and

W_{out} = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour, 4 pounds per hour, of hydrogen chloride (HC1) shall control HC1 emissions so that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or one percent of the HC1 in the stack gas prior to entering any pollution control equipment.

(b) An incinerator burning hazardous waste shall not emit particulate matter in excess of 180 milligrams per dry standard cubic meter, 0.08 grains per dry standard cubic foot, when corrected for the amount of oxygen in the stack gas according to the formula:

$P_c = P_m \times 14 / (21-Y)$

When P_c is correct concentration of particulate matter, P_m is the measured concentration of particulate matter, and Y is the measured concentration of oxygen in the stack gas, using the Orsat method for oxygen analysis of dry flue gas, as presented in 40 CFR 60 Appendix A Method 3. This correction procedure is to be used by all hazardous waste incinerators except those operating under conditions of oxygen enrichment. For these facilities, the Director 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 Director 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 Director's engineering judgement. The Director 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 Director, the operating requirements shall be those most likely to ensure compliance with the performance standards of R315-8-15.4 based on the Director'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 Director, 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 Director that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. At a minimum, operational testing shall be conducted at least monthly.

(d) This monitoring and inspection data shall be recorded and the records shall be placed in the operating record required by R315-8-5.3, which incorporates by reference 264.73.

15.8 CLOSURE

At closure the owner or operator shall remove all hazardous waste and hazardous waste residues, including, but not limited to, ash, scrubber waters, and scrubber sludges, from the incinerator site.

At closure, as throughout the operating period, unless the owner or operator can demonstrate, in accordance with R315-2-3(d), that the residue removed from the incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with applicable requirements. R315-4 - R315-9.

R315-8-16. Miscellaneous Units.

The requirements as found in 40 CFR 264, subpart X, which includes sections 264.600 through 264.603, 2000 ed., are adopted and incorporated by reference.

R315-8-17. Air Emission Standards for Process Vents.

The requirements as found in 40 CFR subpart AA sections 264.1030 through 264.1036, 1998 ed., as amended by 64 FR 3382, January 21, 1999, are adopted and incorporated by reference with the following exception:

(1) substitute "Director " 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 "Director " 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 "Director" 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 "Director" 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, 2010 ed., are adopted and incorporated by reference with the following exception:

substitute "Director" 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 "Director" for all federal regulation references made to "Regional Administrator."

KEY: hazardous waste
April 25, 2013 19-6-105
Notice of Continuation July 13, 2011 19-6-106

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 Director, a variance may be granted by the Director 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 Director.

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 Director 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 Director a written report which contains the following information:

(a) The person's name, address, and telephone number;

(b) Date, time, location, and nature of the incident;

(c) Name and quantity of material(s) involved;

(d) The extent of injuries, if any;

(e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(f) The estimated quantity and disposition of recovered material that resulted from the incident.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-12. Administrative Procedures.
R315-12-1. Administrative Procedures.

Administrative proceedings under the following acts are governed by Rule R305-6:

(a) Title 19, Chapter 6, Part 1 (Solid and Hazardous Waste Act);

(b) Title 19, Chapter 6, Part 6 (Lead Acid Battery Disposal);

(c) Title 19, Chapter 6, Part 7 (Used Oil Management Act);

(d) Tile 19-6, Part 8 (Waste Tire Recycling); and

(e) Title 19, Chapter 6, Part 10 (Mercury Switch Removal Act).

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63G-4-102
63G-4-201 through 205
63G-4-503

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; 70 FR 9138, February 24, 2005; 70 FR 45508, August 5, 2005; 75 FR 12989, March 18, 2010; 75 FR 31716, June 4, 2010; and 75 FR 78918, December 17, 2010, 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 "Director" 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.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-16. Standards for Universal Waste Management.
R315-16-1.General.

1.1 SCOPE

(a) This rule establishes requirements for managing the following:

(1) Batteries as described in section 1.2;

(2) Pesticides as described in section 1.3;

(3) Mercury-containing equipment as described in section 1.4; and

(4) Mercury-containing lamps as described in section 1.5.

(b) This rule provides an alternative set of management standards in lieu of regulation under R315-1 through R315-101.

1.2 APPLICABILITY - BATTERIES

(a) Batteries covered under R315-16.

(1) The requirements of this rule apply to persons managing batteries, as described in section 1.9, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under 40 CFR part 266, subpart G, as incorporated by reference at R315-14-6, are subject to management under this rule.

(b) Batteries not covered under R315-16. The requirements of this rule do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under R315-14-6.

(2) Batteries, as described in section 1.9, that are not yet wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in section 1.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded, e.g., when sent for reclamation.

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

1.3 APPLICABILITY - PESTICIDES

(a) Pesticides covered under R315-16. The requirements of this rule apply to persons managing pesticides, as described in section 1.9, meeting the following conditions, except those listed in paragraph (b) of this section:

(1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b), including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under R315-16. The requirements of this rule do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with R315-5-7. R315-5-7 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with R315-2-7(b)(3);

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in R315-1 through R315-101;

(3) Pesticides that are not wastes under R315-2 , including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in R315-2-10 or if it exhibits one or more of the characteristics identified in R315-2-9.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard, e.g., burn the pesticide for energy recovery.

(2) An unused pesticide product described in paragraph (a)(2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard, e.g., burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under R315-2-2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including R315-16. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under R315-2-2, does not cause the pesticide to be a solid waste, i.e., the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including R315-16. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not decided to discard, them, e.g., burn for energy recovery. These pesticides remain subject to the requirements of FIFRA.

1.4 APPLICABILITY -- MERCURY-CONTAINING EQUIPMENT

(a) Mercury-containing equipment covered under R315-16. The requirements of this section apply to persons managing mercury-containing equipment, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) Mercury-containing equipment not covered under R315-16. The requirements of this section do not apply to persons managing the following mercury-containing equipment:

(1) Mercury-containing equipment that are not yet wastes under R315-2. Paragraph (c) of this section describes when mercury-containing equipment become wastes.

(2) Mercury-containing equipment that are not hazardous waste. A Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste mercury-containing equipment.

(1) Used mercury-containing equipment becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) Used mercury-containing equipment becomes a waste on the date the handler decides to discard it.

1.5 APPLICABILITY - LAMPS

(a) Lamps covered under R315-16. The requirements of this section apply to persons managing lamps, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) Lamps not covered under R315-16. The requirements of R315-16 do not apply to persons managing the following lamps:

(1) Lamps that are not yet wastes under R315-2 as provided in paragraph (c) of this section.

(2) Lamps, that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9(a) and (d) - (g).

(c) Generation of waste lamps.

(1) A used lamp becomes a waste on the date it is discarded, e.g., sent for reclamation.

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

1.8 APPLICABILITY - HOUSEHOLD AND CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR WASTE

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(1) Household wastes that are exempt under R315-2-4 and are also of the same type as the universal wastes defined in section 1.9; or

(2) Conditionally exempt small quantity generator wastes that are exempt under R315-2-5 and are also of the same type as the universal wastes defined in section 1.9.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this rule must manage the commingled waste under the requirements of this rule.

1.9 DEFINITIONS

(a) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(b) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 16-2.4(a) and (c) and sections 16-3.4(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

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

(d) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in R315-2 of this rule, or whose act first causes a hazardous waste to become subject to regulation.

(e) "Lamp," also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(f) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who accumulates 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or mercury-containing equipment, calculated collectively, at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(g) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

(h) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

(i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under FFDCA section 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this section.

(j) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who does not accumulate 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or mercury-containing equipment, calculated collectively, at any time.

(k) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of sections 16-2.4(c)(2) or 16-3.4(c)(2).

(l) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of R315-16:

(1) Batteries as described in section 16-1.2;

(2) Pesticides as described in section 16-1.3;

(3) Mercury-containing equipment as described in section 16-1.4; and

(4) Lamps as described in section 16-1.5.

(m) "Universal Waste Handler":

(1) Means:

(i) A generator, as defined in this section, of universal waste; or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

(i) A person who treats, except under the provisions of sections 16-2.4(a) or (c), or 16-3.4(a) or (c), disposes of, or recycles universal waste; or

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

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

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

R315-16-2. Standards for Small Quantity Handlers of Universal Waste.

2.1 APPLICABILITY

This section applies to small quantity handlers of universal waste as defined in section 16-1.9.

2.2 PROHIBITIONS

A small quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-2.8; or by managing specific wastes as provided in section 16-2.4.

2.3 NOTIFICATION

A small quantity handler of universal waste is not required to notify the Division of universal waste handling activities.

2.4 WASTE MANAGEMENT

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

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

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

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, must determine whether the electrolyte or other solid waste exhibit a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

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

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

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

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) Except for 40 CFR 265.197(c), 265.200, and 265.201, a tank that meets the requirements of R315-7-17, which incorporates 40 CFR part 265, subpart J by reference; or

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

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

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

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4)(i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g. , the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts

260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

2.5 LABELING/MARKING

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in section 16-1.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in section 16-1.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1) (i) and (ii) of this section is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) The words "Universal Waste-Pesticide" or "Universal Waste Pesticides."

(d)(1) Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury-Containing Thermostat(s)," or Used Mercury Thermostat(s)."

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

2.6 ACCUMULATION TIME LIMITS

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

2.7 EMPLOYEE TRAINING

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type, or types of universal waste handled at the facility.

2.8 RESPONSE TO RELEASES

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with R315-5.

2.9 OFF-SITE SHIPMENTS

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transports universal waste off-site, the handler becomes a

universal waste transporter for those self-transportation activities and must comply with the transporter requirements of section 16-4 of this rule while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Division of Solid and Hazardous Waste of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Division will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

2.10 TRACKING UNIVERSAL WASTE SHIPMENTS

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

2.11 EXPORTS

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the handler is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, must:

(a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4) and (6), 262.53(b), and 262.57, as incorporated by reference at R315-5-5;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 CFR part 262 subpart E, as incorporated by reference at R315-5-5; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

2.12 TESTING REQUIREMENTS

A determination of whether or not mercury-containing lamps are hazardous waste shall be performed by a Utah certified laboratory using the Toxicity Characteristic Leaching Procedure according to:

(a) R315-50-7, which incorporates the requirements of 40 CFR 261, Appendix II, 1993 ed.; and

(b) the Science Applications International Corporation report, "Analytical Results of Mercury in Fluorescent Lamps," section 6.0, "Summary Guidelines for the Extraction of Fluorescent Lamps," 1992, prepared for the U.S. Environmental Protection Agency, which is adopted and incorporated by reference.

R315-16-3. Standards for Large Quantity Handlers of Universal Waste.

3.1 APPLICABILITY

This section applies to large quantity handlers of universal waste as defined in section 16-1.9.

3.2 PROHIBITIONS

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-3.8; or by managing specific wastes as provided in section 16-3.4.

3.3 NOTIFICATION

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Director, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified the Division of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in section 16-1.3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all of the types of universal waste managed by the handler, (e.g., batteries, pesticides, mercury-containing equipment, lamps) and;

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.

3.4 WASTE MANAGEMENT

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

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

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

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric

charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products as a result of the activities listed above, must determine whether the electrolyte or other solid waste, or both, exhibits a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

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

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

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

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of R315-7-17, which incorporates by reference 40 CFR part 265 subpart J, excluding the requirements of 40 CFR 265.197(c), 265.200, and 265.201; or

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

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

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

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4)(i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g. , the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage, or damage that could cause

leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

3.5 LABELING/MARKING

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container or tank in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in R315-16-1-3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in R315-16-1-3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides".

(d)(1) Mercury-containing equipment (i.e. , each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste -- Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste -- Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

3.6 ACCUMULATION TIME LIMITS

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling the individual item of universal waste, e.g., each battery, lamp, or thermostat with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

3.7 EMPLOYEE TRAINING

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

3.8 RESPONSE TO RELEASES

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the material resulting from the release, and is subject to R315-5.

3.9 OFF-SITE SHIPMENTS

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transports universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of section 16-4 while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171 through 180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The

handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Division of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Division will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

3.10 TRACKING UNIVERSAL WASTE SHIPMENTS

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received, e.g., batteries, pesticides, lamps, or thermostats;

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent, e.g., batteries, pesticides, thermostats, or lamps;

(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A large quantity handler of universal waste must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste must retain the records described in paragraph (b) of this section for at least three years from the date a shipment of universal waste left the facility.

3.11 EXPORTS

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the handler is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, must:

(a) Comply with the requirements applicable to a primary exporter in R315-5-5;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR, part 262, as incorporated by reference at R315-5-5; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

3.12 TESTING REQUIREMENTS

A determination of whether or not mercury-containing lamps are hazardous waste shall be performed by a Utah certified laboratory using the Toxicity Characteristic Leaching Procedure according to:

(a) R315-50-7, which incorporates the requirements of 40 CFR 261, Appendix II, 1993 ed.; and

(b) the Science Applications International Corporation report, "Analytical Results of Mercury in Fluorescent Lamps," section 6.0, "Summary Guidelines for the Extraction of Fluorescent Lamps," which is adopted and incorporated by reference.

R315-16-4. Standards for Universal Waste Transporters.

4.1 APPLICABILITY

This section applies to universal waste transporters, as defined in R315-16-1.9.

4.2 PROHIBITIONS

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-4.5.

4.3 WASTE MANAGEMENT

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste, shipments do not require a manifest under 40 CFR 262, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.", nor may the hazardous material's proper shipping name be modified by adding the word "waste."

4.4 ACCUMULATION TIME LIMITS

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements of sections 16-2 or 16-3 of this rule while storing the universal waste.

4.5 RESPONSE TO RELEASES

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of R315-1 through R315-101. If the waste is determined to be a hazardous waste, the transporter is subject to R315-5.

4.6 OFF-SITE SHIPMENTS

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172.

4.7 EXPORTS

A universal waste transporter transporting a shipment of

universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the transporter is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

R315-16-5. Standards for Destination Facilities.

5.1 APPLICABILITY

(a) The owner or operator of a destination facility as defined in section 16-1.9 is subject to all applicable requirements of R315-3, R315-7, R315-8, R315-13, R315-14, and the notification requirement under section 3010 of RCRA.

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with 40 CFR 261.6(c)(2), as incorporated by reference at R315-2-6.

5.2 OFF-SITE SHIPMENTS

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(1) Send the shipment back to the original shipper, or

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the a owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the shipper. The Division will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of non-hazardous, non-universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

5.3 TRACKING UNIVERSAL WASTE SHIPMENTS.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received, e.g., batteries, pesticides, thermostats, or lamps;

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

R315-16-6. Import Requirements.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this rule, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of section 16-4 of this rule.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of sections 16-2 or 16-3, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of section 16-5 of this rule.

(d) Persons managing universal waste that is imported from an OECD country as specified in R315-5-5, which incorporates by reference 40 CFR 262,58(a)(1), are subject to paragraphs (a) through (c) of this section, in addition to the requirements of R315-5-8, which incorporates by reference 40 CFR 262, subpart H.

R315-16-7. Petitions to Include Other Wastes Under R315-16.

7.1 GENERAL

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to R315-16 may petition for a regulatory amendment under this section and R315-2.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Director that regulation under the universal waste regulations of R315-16 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by R315-2-17(b). The petition should also address as many of the factors listed in R315-16-7.2 as are appropriate for the waste or waste category addressed in the petition.

(c) The Director will evaluate petitions using the factors listed in R315-16-7.2. The Director will grant or deny a petition using the factors listed in section 16-7-2. The decision will be based on the weight of evidence showing that regulation under R315-16 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Director may request additional information needed to evaluate the merits of the petition.

7.2 FACTORS FOR PETITIONS TO INCLUDE OTHER WASTES UNDER R315-16

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, or if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in R315-2-9. When a characteristic waste is added to the universal waste regulations of R315-16 by using a generic name to identify the waste category, e.g., batteries, the definition of universal waste in section 16-1.9 will be amended to include only the hazardous waste portion of the waste category, e.g., hazardous waste batteries. Thus, only the portion of the waste stream that does exhibit one or more characteristics, i.e., is hazardous waste, is subject to the universal waste regulations of R315-16;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments, including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large

industrial facilities;

(c) The waste or category of waste is generated by a large number of generators, e.g., more than 1,000 nationally, and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste, including packaging, marking, and labeling practices, would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner, e.g., waste management requirements appropriate to be added to R315-16, sections 2.4, 3.4, and 4.3; and applicable Department of Transportation requirements would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under R315-16 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems, e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, and municipal sewer or stormwater systems, to recycling, treatment, or disposal in compliance with Utah Code Annotated 19-6.

(g) Regulation of the waste or category of waste under R315-16 will improve implementation of and compliance with the hazardous waste regulatory program; and

(h) Such other factors as may be appropriate.

KEY: hazardous waste
April 25, 2013 **19-6-105**
Notice of Continuation May 27, 2010 **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 Director 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 Director shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(b) The Director shall review and approve or disapprove the submitted plan based on the requirements outlined in R315-7-17-4(d). If the plan is not approved, the Director shall provide comments to the manufacturer within 60 days of submission of the plan. The manufacturer shall address all comments from the Director and submit an amended plan within 90 days after the Director 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 Director 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 Director 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 Director 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
April 25, 2013 **9-6-1003**
Notice of Continuation July 13, 2011

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 "Director" 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, 2010 ed., are adopted and incorporated by reference, with the following addition:
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
April 25, 2013 **19-6-106**
Notice of Continuation July 13, 2011 **19-6-108**
19-6-105

R315. Environmental Quality, Solid and Hazardous Waste.
R315-101. Cleanup Action and Risk-Based Closure Standards.
R315-101-1. Purpose, Applicability.

(a) Purpose. R315-101 establishes information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved. The procedures in this rule also provide for continued management of sites for which minimal risk-based standards cannot be met.

(b) Applicability.

(1) R315-101 is applicable to any responsible party involved in management of a site contaminated with hazardous waste or hazardous constituents. This rule does not apply to a site that has been or will be cleaned to background.

(2) In the event of a release of hazardous waste or material which, when released, becomes hazardous waste, these requirements apply if the responsible party fails to clean up all the released material and any residue or contaminated soil, water or other material resulting from the release as required by R315-9-3. If the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director determines that ecological effects are insignificant based on the approved assessment conducted in accordance with R315-101-5.3(a)(8), the requirements of R315-9-3 shall be considered met.

(3) The owner or operator of a hazardous waste management facility or a facility subject to interim status requirements shall meet the requirements of R315-7-14 and R315-8-7 prior to implementation of any activities described in R315-101. The requirements of R315-3-1.1(e)(5) and (6) shall be met for a hazardous waste management unit if the level of risk present at the site is below 1×10^{-6} for carcinogens and a Hazard Index of less than or equal to one for non-carcinogens based on the risk assessment conducted in accordance with R315-101-5.2(b)(1) and the Director 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 Director 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 Director 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 Director determines that additional work is needed to stabilize the site, the Director 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 Director 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 Director 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 Director. 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 Director 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 Director;

(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 Director;

(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 Director; and

(8) Unless justification is provided to the Director, and a waiver of this requirement is granted by the Director 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 Director 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 Director 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 Director 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 Director shall review and approve or disapprove of the conclusions of the proposed site management plan. If the Director 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 Director within an appropriate time frame as specified by the Director. The Director shall review and approve or reject the revised site management plan. Upon draft approval of the site management plan, the Director 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 Director rejects this revised site management plan, the revised plan will be considered deficient for the reasons specified by the Director 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 x 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 Director 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 x 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 Director 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 x 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 Director 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 x 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 x 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 Director 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 x 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 Director 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 Director 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 Director 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 Director 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 Director, 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 Director 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 Director 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 Director 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 Director shall bill the responsible party for review of plans submitted to meet the requirements of this Rule.

(3) The responsible party shall notify the Director at least seven days prior to any sampling event or remediation activity.

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April 25, 2013 19-6-105
Notice of Continuation July 13, 2011 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-102. Penalty Policy.
R315-102-1. Purpose, Scope, and Applicability.

(a) Subsection 19-6-113(2) of the Utah Solid and Hazardous Waste Act provides that any person who violates any order, plan, rule, or other requirement issued or adopted under the Act is subject in a civil proceeding to a penalty of not more than $13,000 per day for each day of violation. Subsection 19-6-721(1) of the Used Oil Management Act provide that any person who violates any order, plan, rule, or other requirement issued or adopted under the Acts is subject in a civil proceeding to a penalty of not more than $10,000 per day for each day of violation. Subsection 19-6-104(1)(e) of the Utah Solid and Hazardous Waste Act allows the Director to settle or compromise administrative or civil actions initiated to compel compliance with the Act or rules adopted under the Act.

(b) The following criteria are to be used by the Director for determining amounts which (1) may be sought in settlement of enforcement actions, and which (2) may be accepted in settlement of enforcement actions.

(c) The procedures in R315-102 are intended solely for the guidance of the Director and are not intended, and cannot be relied upon, to create a cause of action against the State.

R315-102-2. Criterion 1: Factors.

The Director shall consider the following factors when calculating a settlement amount:

(a) Economic benefit of noncompliance. These are the costs a person may save by delaying or avoiding compliance with applicable laws or rules.

(b) Gravity of the violation. This component of the calculation shall be based on:

(1) the extent of deviation from the rules, and

(2) the potential for harm to human health and the environment, regardless of the extent of harm that actually occurred.

(c) The number of days of noncompliance.

(d) Good faith efforts to comply or lack of good faith. This takes into account the openness in dealing with the violations, promptness in correction of the problems, and the degree of cooperation with the State to include accessibility to information and the amount of State effort necessary to bring the person into compliance.

(e) Degree of willfulness or negligence. Factors to be considered include how much control the violator had over the events constituting the violation, the foreseeability of the events constituting the violation, whether the violator took reasonable precautions to prevent the violation, and whether the violator knew, or should have known, of the hazards associated with the conduct or the legal requirements which were violated.

(f) History of compliance or noncompliance. The settlement amount may be adjusted upward in consideration of previous violations and the degree of recidivism. Likewise, the settlement amount may be adjusted downward when it is shown that the violator has a good compliance record.

(g) Ability to pay. The settlement amount may be adjusted downward based on a person's inability to pay. This should be distinguished from a person's unwillingness to pay. In cases of financial hardship, the Director may accept payment of the settlement under an installment plan, delayed payment schedule, reduced penalty amount, or any combination of these options.

(h) Other unique factors.

R315-102-3. Criterion 2: Calculation of Settlement Amounts.

(a) Violations are grouped into the following categories based on the gravity of the violation:

(1) Major potential for harm, major extent of deviation from the requirement. For used oil, major potential for harm, major extent of deviation from the requirement: $8,000 to $10,000. For hazardous waste or constituents, or solid waste, major potential for harm, major deviation from the requirement: $10,400 to $13,000.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(2) Major potential for harm, moderate extent of deviation from the requirement. For used oil, major potential for harm, moderate deviation from the requirement: $6,000 to $8,000. For hazardous waste or constituents, or solid waste, major potential for harm, moderate deviation from the requirement: $7,800 to $10,400.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(3) Major potential for harm, minor extent of deviation from the requirement. For used oil, major potential for harm, minor deviation from the requirement: $4,400 to $6,000. For hazardous waste or constituents, or solid waste, major potential for harm, minor deviation from the requirement: $5,720 to $7,800.

(i) The violation: poses, or may pose, a relatively high risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a relatively high adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(4) Moderate potential for harm, major extent of deviation. For used oil, moderate potential for harm, major deviation from the requirement: $3,200 to $4,400. For hazardous waste or constituents, or solid waste, moderate potential for harm, major deviation from the requirement: $4,160 to $5,720.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(5) Moderate potential for harm, moderate extent of deviation from the requirement. For used oil, moderate potential for harm, moderate deviation from the requirement: $2,000 to $3,200. For hazardous waste or constituents, or solid waste, moderate potential for harm, moderate deviation from the requirement: $2,600 to $4,160.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory

purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(6) Moderate potential for harm, minor extent of deviation from the requirement. For used oil, moderate potential for harm, minor deviation from the requirement: $1,200 to $2,000. For hazardous waste or constituents, or solid waste, moderate potential for harm, minor deviation from the requirement: $1,560 to $2,600.

(i) The violation: poses, or may pose, a medium risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a medium adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(7) Minor potential for harm, major extent of deviation from the requirement. For used oil, minor potential for harm, major deviation for the requirement: $600 to $1,200. For hazardous waste or constituents, or solid waste, minor potential for harm, major deviation from the requirement: $780 to $1,560.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates from requirements of the regulation or statute to such an extent that most, or important aspects, of the requirements are not met, resulting in substantial noncompliance.

(8) Minor potential for harm, moderate extent of deviation from the requirements. For used oil, minor potential for harm, moderate deviation from the requirement: $200 to $600. For hazardous waste or constituents, or solid waste, minor potential for harm, moderate deviation from the requirement: $260 to $780.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator significantly deviates from the requirements of the regulation or statute but some of the requirements are implemented as intended.

(9) Minor potential for harm, minor extent of deviation from the requirements. For used oil, minor potential for harm, minor deviation from the requirement: $40 to $200. For hazardous waste or constituents, or solid waste, minor potential for harm, minor deviation from the requirement: $50 to $260.

(i) The violation: poses, or may pose, a relatively low risk of exposure of humans or other environmental receptors to hazardous waste or constituents, solid waste, or used oil; or has, or may have, a small adverse effect on statutory or regulatory purposes or procedures for implementing the hazardous waste, solid waste, or used oil programs.

(ii) The violator deviates somewhat from the regulatory or statutory requirements but most, or all important aspects, of the requirements are met.

(b) The Director shall have the discretion to determine the appropriate amount within these ranges.

(c) If applicable, a multi-day component may be added to the settlement amount determined in R315-102-3(b). The amount used in a multi-day calculation will typically range from 5% to 20%, with a minimum of $40 per day for used oil, and with a minimum of $50 per day for hazardous waste or constituents, or solid waste, of the amount determined in R315-102-3(b) for each day of violation up to 179 days following the first day of violation. However, discretion is retained to consider amounts (1) of up to $10,000 per day of violation for used oil and up to $13,000 per day of violation for hazardous waste or constituents, or solid waste and (2) for days of violation after the first 179 days following the first day of violation.

(d) The amount calculated above may be adjusted by taking into account the factors specified in R315-102-2(d) through (h).

(e) This amount will then be added to any economic benefit gained by the person as specified in R315-102-2(a).

(f) If applicable, partial credit may be given for an approved supplemental environmental project.

KEY: hazardous waste

April 25, 2013	**19-6-105**
Notice of Continuation May 27, 2010	**19-6-106**

R315. Environmental Quality, Solid and Hazardous Waste.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos waste " means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I Landfill" means a non-commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(a)(iii) and is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5; and

(b) does not meet the standards of Subsection R315-303-3(3)(e)(v).

(8) "Class II Landfill" means a non-commercial landfill or a landfill that is permitted by the Director

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(b) meets the standards of Subsection R315-303-3(3)(e)(v).

(9) "Class III Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non-commercial landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3; and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the Director to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Director to receive for disposal only:

(a) construction/demolition waste, excluding waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Director and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2); and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) A Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction/demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(i) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

(13) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(14) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(15) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of

a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit (60 degrees Celsius), or higher, for at least some part of each day of a consecutive seven day period, to a state in which the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, that may be generated by these operations.

(a) Such waste may include:

(i) concrete, bricks, and other masonry materials;

(ii) soil and rock;

(iii) waste asphalt;

(iv) rebar contained in concrete; and

(v) untreated wood, and tree stumps.

(b) Construction/demolition waste does not include:

(i) friable asbestos;

(ii) treated wood; or

(iii) contaminated soils or tanks resulting from remediation or clean-up at any release or spill.

(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil that is a result of human activity.

(19) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

(20) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(21) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(22) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through 320 by the Director; and

(b) received final approval to accept waste as required by Subsection R315-301-5(1).

(23) "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the current permit under which the facility is operating.

(24) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of these.

(25) "Floodplain" means the land that has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

(27) "Garbage" means discarded animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(28) "Ground water" means subsurface water that is in the zone of saturation including perched ground water.

(29) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(30) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-2-3.

(31) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(32) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(33) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(34) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of solid waste for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Rule R315-15.

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemical industries; food and related products or by-products industries; inorganic chemical industries; iron and steel manufacturing; leather and leather product industries; nonferrous metals manufacturing or foundry industries; organic chemical industries; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic product industries; stone, glass, clay, and concrete product industries; textile manufacturing; transportation equipment manufacturing; and water treatment industries. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(18)(b).

(36) "Industrial solid waste facility" means a facility that receives only industrial solid waste from on-site or off-site sources for disposal.

(37) "Inert waste" means noncombustible, nonhazardous solid wastes that retain their physical and chemical structure under expected conditions of disposal, including wastes that

exhibit resistance to biological or chemical change.

(38) "Landfill" means a disposal facility where solid waste is or has been placed in or on the land and that is not a landtreatment facility or surface impoundment.

(39) "Land treatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current permit under which the facility is operating; or

(c) any horizontal expansion not consistent with past normal operating practices.

(41) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(42) "Leachate" means a liquid that has passed through or emerged from solid waste and that may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(43) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(44) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(47) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and non-hazardous sludge.

(48) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through 320 by the Director;

(b) did not have a permit or other valid approval issued under Rules R315-301 through 320 at the time of the application; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

(49) "Off site" means any site which is not on site.

(50) "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(51) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

(53) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(54) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(55) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(58) "Putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

(59) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(60) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returning to a waste stream or being otherwise disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(61) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(62) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(63) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(64) "Scavenging" means the unauthorized removal of solid waste from a facility.

(65) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(66) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(67) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or

cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(68) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a landfill, incinerator, or land treatment area.

(70) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

(a) Special waste may include:

(i) ash;

(ii) automobile bodies;

(iii) furniture and appliances;

(iv) infectious waste;

(v) waste tires;

(vi) dead animals;

(vii) asbestos;

(viii) waste exempt from the hazardous waste regulations under Section R315-2-4;

(ix) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5;

(x) waste containing PCBs;

(xi) petroleum contaminated soils;

(xii) waste asphalt; and

(xiii) sludge.

(b) Special waste must be handled and disposed according to the requirements of Rule R315-315.

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

(73) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(76) "Transport vehicle" means a vehicle capable of hauling solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(77) "Treated wood" means any wood item that has been treated with the following or compounds containing the following:

(a) creosote or related compounds;

(b) Arsenic;

(c) Chromium; or

(d) Copper.

(78) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(79) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains all features to render it capable of performing its intended function and of being closed as a separate entity.

(80) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(81) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(82) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(83) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(84) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(85) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

(i) whole waste tires used as a fence;

(ii) whole waste tires used as a windbreak; and

(iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(86) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(87) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic,

processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules.

(2) When any solid waste is disposed in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, the property owner of the disposal site or the person responsible for the illegal disposal or both:

(a) shall remove the solid waste from the illegal disposal site to a permitted solid waste disposal facility and, if necessary, shall remediate the site; or

(b) shall apply for a permit form the Director and shall meet all of the following;

(i) submit the required permit application in the time frame specified by the Director and respond promptly to all requests for information from the Director related to the permit application;

(ii) shall immediately meet all of the operational monitoring and waste handling criteria of Rules R315-301 through 320; and

(iii) shall follow the requirements of Rule R315-301-4(2)(a) if a permit is not granted.

(3) Any person disposing of solid waste in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, may be subject to enforcement action in addition to meeting the requirements of Rule R315-301-4(2).

(4) When deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through 320 do not apply to:

(a) inert waste used as fill material;

(b) the disposal of mine tailings and overburden;

(c) the disposal of vegetative material generated as a result of land clearing; or

(d) the disposal of vegetative agricultural waste.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be established, operated, maintained, or expanded until the owner or operator of such facility has obtained a permit from the Director and has received a letter of approval from the Director to accept waste.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal, by burial, of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

KEY: solid waste management, waste disposal

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40 CFR 258

R315. Environmental Quality, Solid and Hazardous Waste.
R315-302. Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements.
R315-302-1. Location Standards for Disposal Facilities.

(1) Applicability.

(a) These standards apply to each new solid waste disposal facility and any existing solid waste disposal facility seeking facility expansion, including:

(i) Class I, II, and V Landfills;

(ii) Class III Landfills as specified in Rule R315-304;

(iii) Class IV and VI Landfills as specified in Rule R315-305;

(iv) piles that are to be closed as landfills; and

(v) Incinerators as specified in Rule R315-306.

(b) These standards, accept for Subsection R315-302-1(2)(f) or unless otherwise noted, do not apply to:

(i) an existing facility;

(ii) a transfer station or a drop box facility;

(iii) a pile used for storage;

(iv) composting or utilization of sludge or other solid waste on land; or

(v) a hazardous waste disposal sites regulated by Rules R315-1 through R315-50 and Rule R315-101.

(2) Location Standards. Each applicable solid waste facility shall be subject to the following location standards.

(a) Land Use Compatibility. No new facility shall be located within:

(i) one thousand feet of a:

(A) national, state, county, or city park, monument, or recreation area;

(B) designated wilderness or wilderness study area;

(C) wild and scenic river area; or

(D) stream, lake, or reservoir;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitat for threatened or endangered species as designated pursuant to the Endangered Species Act of 1982;

(iii) farmland classified or evaluated as "prime," "unique," or of "statewide importance" by the U.S. Department of Agriculture Soil Conservation Service under the Prime Farmland Protection Act;

(iv) one-fourth mile of:

(A) existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance; and

(B) historic structures or properties listed or eligible to be listed in the State or National Register of Historic Places;

(v) ten thousand feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of bird/aircraft collisions. Every new and existing disposal facility is subject to this requirement. If a new landfill or a lateral expansion of an existing landfill is located within six miles of an airport runway end, the owner or operator must notify the affected airport and the Federal Aviation Administration; or

(vi) areas with respect to archeological sites that would violate Section 9-8-404.

(b) Geology.

(i) No new facility or lateral expansion of an existing facility shall be located in a subsidence area, a dam failure flood area, above an underground mine, above a salt dome, above a salt bed, or on or adjacent to geologic features which could compromise the structural integrity of the facility.

(ii) Holocene Fault Areas. A new facility or a lateral expansions of an existing facility shall not be located within 200 feet of a Holocene fault unless the owner or operator demonstrates to the Director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the unit and will be protective of human health and the environment.

(iii) Seismic Impact Zones. A new facility or a lateral expansion of an existing facility shall not be located in seismic impact zones unless the owner or operator demonstrates to the satisfaction of the Director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(iv) Unstable Areas. The owner or operator of an existing facility, a lateral expansion of an existing facility, or a new facility located in an unstable area must demonstrate to the satisfaction of the Director that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted. The owner or operator must consider the following factors when determining whether an area is unstable:

(A) on-site or local soil conditions that may result in significant differential settling;

(B) on-site or local geologic or geomorphologic features; and

(C) on-site or local human-made features or events, both surface and subsurface.

(c) Surface Water.

(i) No new facility or lateral expansion of an existing facility shall be located on any public land that is being used by a public water system for water shed control for municipal drinking water purposes.

(ii) Floodplains. No new or existing facility shall be located in a floodplain unless the owner or operator demonstrates to the Director that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in a washout of solid waste so as to pose a hazard to human health or the environment.

(d) Wetlands. No new facility or lateral expansion of an existing facility shall be located in wetlands unless the owner or operator demonstrates to the Director that:

(i) where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(ii) the unit will not violate any applicable state water quality standard or section 307 of the Clean Water Act;

(iii) the unit will not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973;

(iv) the unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(A) erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the unit;

(B) erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(C) the volume and chemical nature of the waste managed in the unit;

(D) impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) the potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(F) any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(v) to the extent required under section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands, as defined by acreage and function, by first avoiding impacts to wetlands

to the maximum extent practicable as required by Subsection R315-302-1(2)(d)(i), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(vi) sufficient information is available to make a reasonable determination with respect to these demonstrations.

(e) Ground Water.

(i) No new facility or lateral expansion of an existing facility shall be located at a site:

(A) where the bottom of the lowest liner is less than five feet above the historical high level of ground water; or

(B) for a landfill that is not required to install a liner, the lowest level of waste must be at least ten feet above the historical high level of ground water.

(C) If the aquifer beneath a landfill contains ground water which has a Total Dissolved Solids (TDS) of 10,000 mg/l or greater and the landfill is constructed with a composite liner, the bottom of the lowest liner may be less than five feet above the historical high level of the ground water.

(ii) No new facility shall be located over a sole source aquifer as designated in 40 CFR 149.

(iii) No new facility shall be located over groundwater classed as IB under Section R317-6-3.3.

(iv) Unless all units of the proposed facility are constructed with a composite liner or other equivalent design approved by the Director:

(A) a new facility located above any aquifer containing ground water which has a TDS content below 1,000 mg/l which does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is greater than 100 feet; or

(B) a new facility located above any aquifer containing ground water which has a TDS content between 1,000 and 3,000 mg/l and does not exceed applicable ground water quality standards for any contaminant is permitted only where the depth to ground water is 50 feet or greater.

(C) The applicant for the proposed facility will make the demonstration of ground water quality necessary to determine the appropriate aquifer classification.

(v) No new facility shall be located in designated drinking water source protection areas or, if no source protection area is designated, within a distance to existing drinking water wells or springs for public water supplies of 250 days ground water travel time. This requirement does not include on-site operation wells. The applicant for the proposed facility will make the demonstration, acceptable to the Director, of hydraulic conductivity and other information necessary to determine the 250 days ground water travel distance.

(vi) Ground Water Alternative.

(A) Subject to the ground water performance standard stated in Subsection R315-303-2(1), if a solid waste disposal facility is to be located over an area where the ground water has a TDS of 10,000 mg/l or greater, or where there is an extreme depth to ground water, or where there is a natural impermeable barrier above the ground water, or where there is no ground water, the Director may approve, on a site specific basis, an alternative ground water monitoring system at the facility or may wave the ground water monitoring requirement. If ground water monitoring is waved the owner or operator shall make the demonstration stated in Subsection R315-308-1(3).

(B) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the ground water quality standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Director if the operation of the facility impacts ground water.

(f) Historic preservation survey requirement.

(i) Each new facility or expansion of an existing facility shall:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(ii) Each existing facility shall, for all areas of the site that have not been disturbed:

(A) have a notice of concurrence issued by the state historic preservation officer as provided for in Subsection 9-8-404(3)(a)(i); or

(B) show that the state historic preservation officer did not respond within 30 days to the submittal, to the officer, of an evaluation; or

(C) have received a joint analysis conducted as required by Subsection 9-8-404(2).

(3) Exemptions. Exemptions from the location standards with respect to airports, floodplains, wetlands, fault areas, seismic impact zones, and unstable areas cannot be granted. Exemptions from other location standards of Section R315-302-1 may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(a) No exemption may be granted without application to the Director.

(b) If an exemption is granted, a facility may be required to have a more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) All applications for exemptions shall meet the conditions of Section R315-311-3 pertaining to public notice and comment period.

R315-302-2. General Facility Requirements.

(1) Applicability.

(a) Each new and existing solid waste facility for which a permit is required by Section R315-310-1, shall meet the applicable requirements of Section R315-302-2 or portions of Section R315-302-2 as required by Rules R315-304, R315-305, R315-306, R315-307, R315-312, R315-313, or R315-314.

(b) Any facility which stores waste in piles that is subject to the requirements of Rule R315-314 shall meet the applicable requirements of Section R315-302-2.

(c) Any recycling facility or composting facility subject to the standards of Rule R315-312 shall submit a plan of operation, to the Director, that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-312.

(ii) Prior to the acceptance of waste or recyclable material or beginning operations at the facility, the owner or operator of a recycling or composting facility must receive notice from the Director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-312.

(d) Any transfer station subject to the standards of Rule R315-313 shall submit a plan of operation to the Director that demonstrates compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(i) The submitted plan of operation shall be reviewed to determine compliance with the applicable standards of Section R315-302-2 and Rule R315-313.

(ii) Prior to the acceptance of waste or beginning

operations at the facility, the owner or operator of a transfer station facility must receive notice from the Director that the plan of operation meets the applicable standards of Section R315-302-2 and Rule R315-313.

(e) The requirements of Section R315-302-2 apply to industrial solid waste facilities as specified in Rule R315-304.

(f) A solid waste incinerator facility that meets the quantity limitation of Subsection R315-306-3(1)(b) shall meet the reporting requirements of Subsection R315-302-2(4).

(2) Plan of Operation. Each owner or operator shall develop, keep on file, and abide by a plan of operation approved by the Director. The plan shall describe the facility's operation and shall convey to site operating personnel the concept of operation intended by the designer. The plan of operation shall be available for inspection at the request of the Director or his authorized representative. The facility must be operated in accordance with the plan. Each plan of operation shall include:

(a) an intended schedule of construction. Facility permits will be reviewed by the Director no later than 18 months after the permit is issued and periodically thereafter, to determine if the schedule of construction is reasonably being followed. Failure to comply with the schedule of construction may result in revocation of the permit;

(b) a description of on-site solid waste handling procedures during the active life of the facility;

(c) a schedule for conducting inspections and monitoring for the facility;

(d) contingency plans in the event of a fire or explosion;

(e) corrective action programs to be initiated if ground water is contaminated;

(f) contingency plans for other releases, e.g. release of explosive gases or failure of run-off containment system;

(g) a plan to control fugitive dust generated from roads, construction, general operations, and covering the waste;

(h) a plan to control wind-blown litter that includes equipment and methods to contain litter, including a schedule and methods to collect scattered litter in a timely manner;

(i) a description of maintenance of installed equipment including leachate and gas collection systems, and ground water monitoring systems;

(j) procedures for excluding the receipt of prohibited hazardous waste or prohibited waste containing PCBs;

(k) procedures for controlling disease vectors;

(l) a plan for an alternative waste handling or disposal system during periods when the solid waste facility is not able to dispose of solid waste, including procedures to be followed in case of equipment breakdown;

(m) closure and post-closure care plans;

(n) cost estimates and financial assurance as required by Subsection R315-309-2(3);

(o) a landfill operations training plan for site operators; and

(p) other information pertaining to the plan of operation as required by the Director.

(3) Recordkeeping. Each owner or operator shall maintain and keep, on-site or at a location approved by the Director, the following permanent records:

(a) a daily operating record, to be completed at the end of each day of operation, that shall contain:

(i) the weights, in tons, or volumes, in cubic yards, of solid waste received each day, number of vehicles entering, and if available, the type of wastes received each day;

(ii) deviations from the approved plan of operation;

(iii) training and notification procedures;

(iv) results of ground water and gas monitoring that may be required; and

(v) an inspection log or summary; and

(b) other records to include:

(i) documentation of any demonstration made with respect to any location standard or exemption;

(ii) any design documentation for the placement or recirculation of leachate or gas condensate into the landfill as allowed by Subsection R315-303-3(2)(b);

(iii) closure and post-closure care plans as required by Subsections R315-302-3(4) and (7);

(iv) cost estimates and financial assurance documentation as required by Subsection R315-309-2(3);

(v) any information demonstrating compliance with Class II Landfill requirements if applicable; and

(vi) other information pertaining to operation, maintenance, monitoring, or inspections as may be required by the Director.

(4) Reporting.

(a) Each owner or operator of any facility, including a facility performing post-closure care, shall prepare an annual report and place the report in the facility's operating record. The owner or operator of the facility shall submit a copy of the annual report to the Director by March 1 of each year for the most recent calendar year or fiscal year of facility operation.

(b) The annual report shall cover facility activities during the previous year and must include, at a minimum, the following information:

(i) name and address of the facility;

(ii) calendar year covered by the report;

(iii) annual quantity, in tons, of solid waste received;

(iv) the annual update of the required financial assurances mechanism pursuant to Subsection R315-309-2(2);

(v) results of ground water monitoring and gas monitoring; and

(vi) training programs or procedures completed.

(c) Since the amount of waste received must be reported in tons, the following conversion factors shall be used for waste received that is not weighted on scales.

(i) Municipal solid waste:

(A) Uncompacted - 0.15 tons per cubic yard; and

(B) Compacted (delivered in a compaction vehicle) - 0.30 tons per cubic yard.

(ii) Construction/demolition waste - 0.50 tons per cubic yard.

(iii) Municipal incinerator ash - 0.75 tons per cubic yard.

(iv) Other ash - 1.10 tons per cubic yard.

(v) Waste delivered by a resident in a pickup truck or a single axle trailer - 0.25 tons per vehicle.

(vi) Industrial waste - a reasonable conversion factor, based on site specific data, developed by the owner or operator of the facility.

(d) If an owner or operator of a municipal landfill or a construction/demolition landfill has documented conversion factors that are based on facility specific data, these conversion factors may be used to report the amounts of waste when approved by the Director.

(5) Inspections.

(a) The owner or operator shall inspect the facility to prevent malfunctions and deterioration, operator errors, and discharges which may cause or lead to the release of wastes to the environment or to a threat to human health. The owner or operator must conduct these inspections with sufficient frequency, no less than quarterly, to identify problems in time to correct them before they harm human health or the environment. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and handwritten signature of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action. The log or summary must be kept at the facility or other convenient location if permanent office facilities are not on-site, for at least three years from the date of inspection. Inspection records shall be available to the Director or his authorized representative upon

request.

(b) The Director or any duly authorized officer, employee, or representative of the Director may, at any reasonable time and upon presentation of appropriate credentials, enter any solid waste facility and inspect the property, records, monitoring systems, activities and practices, or solid waste being handled for the purpose of ascertaining compliance with Rules R315-301 through 320 and the approved plan of operation for the facility.

(i) The inspector may conduct monitoring or testing, or collect samples for testing, to verify the accuracy of information submitted by the owner or operator or to ensure that the owner or operator is in compliance. The owner or operator may request split samples and analysis parameters on any samples collected by the inspector.

(ii) The inspector may use photographic equipment, video camera, electronic recording device, or any other reasonable means to record information during any inspection.

(iii) The results of any inspection shall be furnished promptly to the owner or operator of the facility.

(6) Recording with the County Recorder.

Not later than 60 days after certification of closure, the owner or operator of a solid waste disposal facility shall:

(a) submit plats and a statement of fact concerning the location of any disposal site to the county recorder to be recorded as part of the record of title; and

(b) submit proof of record of title filing to the Director.

R315-302-3. General Closure and Post Closure Requirements.

(1) Applicability.

(a) The owner or operator of any solid waste disposal facility that requires a permit shall meet the applicable standards of Section R315-302-3 and shall provide financial assurance for closure and post-closure care costs that meets the requirements of Rule R315-309.

(b) The requirements of Subsections (2), (3), and (4) of this section apply to any solid waste management facility as defined by Subsection 19-6-502(12). The requirements of Subsections (5), (6), and (7) of this section apply to:

(i) Class I, II, IV, V, and VI Landfills;

(ii) Class III Landfills as specified in Rule R315-304: and

(iii) any landtreatment disposal facility.

(2) Closure Performance Standard. Each owner or operator shall close its facility or unit in a manner that:

(a) minimizes the need for further maintenance;

(b) minimizes or eliminates threats to human health and the environment from post-closure escape of solid waste constituents, leachate, landfill gases, contaminated run-off or waste decomposition products to the ground, ground water, surface water, or the atmosphere; and

(c) prepares the facility or unit for the post-closure period.

(3) Closure Plan and Amendment.

(a) Closure may include covering, grading, seeding, landscaping, contouring, and screening. For a transfer station or a drop box facility, closure includes waste removal and decontamination of the site, including soil analysis, ground water analysis, or other procedures as required by the Director.

(b) Each owner or operator shall develop, keep on file and abide by a plan of closure required by Subsection R315-302-2(2)(m) which, when approved by the Director, will become part of the permit.

(c) The closure plan shall project time intervals at which sequential partial closure, if applicable, is to be implemented and identify closure cost estimates and projected fund withdrawal intervals for the associated closure costs from the approved financial assurance instrument required by Rule R315-309.

(d) The closure plan may be amended if conditions and circumstances justify such amendment. If it is determined that amendment of a facility closure plan is required, the Director may direct facility closure activities, in part or whole, to cease until the closure plan amendment has been reviewed and approved by the Director.

(e) Each owner and operator shall close the facility or unit in accordance with the approved closure plan and all approved amendments.

(4) Closure Procedures.

(a) Each owner and operator shall notify the Director of the intent to implement the closure plan in whole or part, 60 days prior to the projected final receipt of waste at the unit or facility unless otherwise specified in the approved closure plan.

(b) The owner or operator shall commence implementation of the closure plan, in part or whole, within 30 days after receipt of the final volume of waste, or for landfills, when the final elevation is attained in part or all of the facility cell or unit as identified in the approved facility closure plan unless otherwise specified in the approved closure plan. Closure activities shall be completed within 180 days from their starting time. Extensions of the closure period may be granted by the Director if justification for the extension is documented by the owner or operator.

(c) When an owner or operator completes closure of a solid waste management unit or facility closure is completed, he shall, within 90 days or as required by the Director, submit to the Director:

(i) facility or unit closure plans, except for Class IIIb, IVb, and VI Landfills, signed by a professional engineer registered in the state of Utah, and modified as necessary to represent as-built changes to final closure construction as approved in the closure plan; and

(ii) certification by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah, that the site or unit has been closed in accordance with the approved closure plan.

(5) Post-Closure Performance Standard. Each owner or operator shall provide post-closure activities for continued facility maintenance and monitoring of gases, land, and water for 30 years or as long as the Director determines is necessary for the facility or unit to become stabilized and to protect human health and the environment.

(6) Post-Closure Plan and Amendment.

(a) For any disposal facility, except an energy recovery or incinerator facility, post-closure care may include:

(i) ground water and surface water monitoring;

(ii) leachate collection and treatment;

(iii) gas monitoring;

(iv) maintenance of the facility, the facility structures that remain after closure, and monitoring systems for their intended use as required by the approved permit;

(v) a description of the planned use of the property; and

(vi) any other activity required by the Director to protect human health and the environment for a period of 30 years or a period established by the Director.

(b) Each owner or operator shall develop, keep on file, and abide by a post-closure plan as required by Subsection R315-302-2(2)(m) and as approved by the Director as part of the permit. The post-closure plan shall address facility or unit maintenance and monitoring activities until the site becomes stabilized (i.e., little or no settlement, gas production or leachate generation) and monitoring and maintenance activities can be safely discontinued.

(c) The post-closure plan shall project time intervals at which post-closure activities are to be implemented and identify post-closure cost estimates and projected fund withdrawal intervals from the selected financial assurance instrument, where applicable, for the associated post-closure costs.

(d) The post-closure plan may be amended if conditions and circumstances justify such amendment. If it is determined

that amendment of a facility or unit post-closure plan is required, the Director may direct facility post-closure activities, in part or whole, to cease until the post-closure plan amendment has been reviewed and approved.

(7) Post-Closure Procedures.

(a) Each owner or operator shall commence post-closure activities after closure activities have been completed. The Director may direct that post-closure activities cease until the owner or operator receives a notice from the Director to proceed with post-closure activities.

(b) When post-closure activities are complete, as determined by the Director, the owner or operator shall submit a certification to the Director, signed by the owner or operator, and, except for Class IIIb, IVb, and VI Landfills, a professional engineer registered in the state of Utah stating why post-closure activities are no longer necessary (i.e., little or no settlement, gas production, or leachate generation).

(c) If the Director finds that post-closure monitoring has established that the facility or unit is stabilized (i.e., little or no settlement, gas production, or leachate generation) the Director may authorize the owner or operator to discontinue any portion or all of the post-closure maintenance and monitoring activities.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-303. Landfilling Standards.
R315-303-1. Applicability.

The standards of Rule R315-303 apply to:

(1) Class I, II, and V Landfills;

(2) Class III Landfills as specified in Rule R315-304; and

(3) Class IV, and VI Landfills as specified in Rule R315-305.

R315-303-2. Standards for Performance.

(1) Ground Water. An owner or operator of a disposal facility shall not contaminate the ground water underlying the facility beyond the ground water quality standard set in Section R315-308-4 or, for constituents not set in Section R315-308-4, as established by the Director based on health risk standards.

(2) Air Quality and Explosive Gas Emissions.

(a) An owner or operator of a disposal facility shall not allow concentrations of explosive gases generated by the facility to exceed:

(i) twenty-five percent of the lower explosive limit for explosive gases in facility structures, excluding gas control or recovery system components; and

(ii) the lower explosive limit for explosive gases at the property boundary or beyond.

(b) An owner or operator of a disposal facility shall not cause a violation of any ambient air quality standard at the property boundary or emission standard from any emission of landfill gases, combustion or any other emission associated with the facility.

(3) Surface Waters. An owner or operator of a disposal facility:

(a) shall not cause a violation of any Utah Pollution Discharge Elimination System permit or standard from discharges of surface run-off, leachate or any liquid associated with the facility; and

(b) shall be in compliance under the Clean Water Act for any discharge as well as in compliance with any area-wide or state-wide plan under Section 208 or 319 of the Clean Water Act.

R315-303-3. Standards for Design.

(1) Minimizing Liquids. An owner or operator of a landfill shall minimize liquids admitted to active areas by:

(a) covering according to Subsection R315-303-4(4);

(b) prohibiting the disposal of containerized liquids larger than household size, noncontainerized liquids, sludge containing free liquids, or any waste containing free liquids in containers larger than household size;

(c) designing the landfill to prevent run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(d) designing the landfill to collect and treat the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(e) If the owner or operator of a landfill has received a storm water permit as issued by the Utah Division of Water Quality and is meeting the requirements of the permit, the landfill may be exempt, upon approval of the Director, from the run-on and run-off control requirements of Subsections R315-303-3(1)(c) and (d).

(2) Leachate Collection Systems.

(a) An owner or operator of a landfill required to install liners shall:

(i) install a leachate collection system sized according to water balance calculations or using other accepted engineering methods, either of which shall be approved by the Director;

(ii) install a leachate collection system so as to prevent no more than one foot depth of leachate developing at any point in the bottom of the landfill unit; and

(iii) install a leachate treatment system or a pretreatment system, if necessary, in the case of discharge to a municipal water treatment plant.

(b) The returning of leachate to the landfill or the recirculation of leachate in the landfill may be done only in landfills that have a composite liner system or an approved equivalent liner system.

(3) Liner Designs. An owner or operator of a landfill shall use liners of one of the following designs:

(a) Standard Design. The design shall have a composite liner system consisting of two liners and the associated liner protection layers and a drainage system for leachate collection:

(i) an upper liner made of synthetic material with a thickness of a least 60 mils; and

(ii) a lower liner of at least two feet thickness of recompacted clay or other soil material with a permeability of no more than 1×10^{-7} cm/sec having the bottom liner sloped no less than 2% and the side liners sloped no more than 33%, except where construction and operational integrity can be demonstrated at steeper slopes, with the synthetic liner installed in direct and uniform contact with the compacted soil component; or

(b) Equivalent Design.

(i) The Director may approve an alternative liner design, on a site specific basis, if it can be documented that, under the conditions of location and hydrogeology, the equivalent design will minimize the migration of solid waste constituents or leachate into the ground or surface water at least as effectively as the liner design required in Subsection R315-303-3(3)(a).

(ii) When approving an equivalent liner design, the Director shall consider the following factors:

(A) the hydrogeologic characteristics of the facility and surrounding land;

(B) the climatic factors of the area; and

(C) the volume and physical and chemical characteristics of the leachate; or

(c) Alternative Design.

(i) The owner or operator may use, as approved by the Director, an alternative design.

(ii) The owner or operator must demonstrate that the ground water quality protection standard of Subsection R315-303-2(1) can be met. The demonstration must be approved by the Director, and must be based upon:

(A) the hydrogeologic characteristics of the facility and the surrounding land;

(B) the climatic factors of the area;

(C) the volume and physical and chemical characteristics of the leachate;

(D) predictions of contaminate fate and transport in the subsurface that maximize contaminant migration and consider impacts on human health and the environment; and

(E) predictions of leachate flow from the base of the waste to the uppermost aquifer; or

(d) Stringent Design. When conditions of location, hydrogeology, or waste stream justify, the Director may require that the liner of a landfill be constructed to meet standards more stringent than the liner designs of Subsection R315-303-3(3)(a).

(e) Small Landfill Design.

(i) The small landfill design applies only to a Class II Landfill.

(ii) Each new Class II Landfill and any existing Class II Landfill seeking facility expansion shall meet the location standards of Section R315-302-1.

(iii) Each new and existing Class II Landfill shall meet the performance standards of Section R315-303-2.

(iv) A Class II Landfill, which meets the requirements of Subsection R315-303-3(3)(e)(v), is exempt from the liner, leachate collection system, and ground water monitoring requirements of Rule R315-303.

(v) A Class II Landfill will be approved only if:

(A) there is no evidence of existing ground water contamination;

(B) the landfill serves a community that has no practicable waste management alternative as determined by the Director;

(C) the landfill is located in an area which receives less than 25 inches of annual precipitation;

(D) the landfill receives, on a yearly average, no more than 20 tons of waste per day, or if a tonnage cannot be determined, serves a population of no more than 8,900; and

(E) the landfill meets all the requirements in Rules R315-301 through 320 applicable to Class II landfills.

(vi) A Class II Landfill may lose the exemptions of the small landfill design if at any time the landfill receives more than 20 tons of solid waste per day, based on an annual average, or has caused ground water contamination.

(4) Closure. At closure, an owner or operator of a Class I, II, IIIa, IVa, and V Landfill shall use one of the following designs for the final cover.

(a) Standard Design. The standard design of the final cover shall consist of two layers:

(i) a layer to minimize infiltration, consisting of at least 18 inches of compacted soil, or equivalent, with a permeability of 1×10^{-5} cm/sec or less, or equivalent, shall be placed upon the final lifts;

(A) in no case shall the cover of the final lifts be more permeable than the bottom liner system or natural subsoils present in the unit; and

(B) the grade of surface slopes shall not be less than 2%, nor the grade of side slopes more than 33%, except where construction integrity and the integrity of erosion control can be demonstrated at steeper slopes; and

(ii) a layer to minimize erosion, consisting of:

(A) at least 6 inches of soil capable of sustaining vegetative growth placed over the compacted soil cover and seeded with grass, other shallow rooted vegetation or other native vegetation; or

(B) other suitable material, approved by the Director.

(b) Requirements for any Earthen Final Cover at a Landfill.

(i) Markers or other benchmarks shall be installed in any final earthen cover to indicate the thickness of the final cover. These markers shall be observed during each quarterly inspection and the earthen cover shall be raised to the appropriate thickness as necessary.

(ii) Erosion channels deeper than 10% of the total cover thickness shall be repaired as soon as possible following their discovery.

(c) Alternative Final Cover Design. The Director may approve an alternative final cover design, on a site specific basis, if it can be documented that:

(i) the alternative final cover achieves an equivalent reduction in infiltration as achieved by the standard design in Subsection R315-303-3(4)(a)(i); and

(ii) the alternative final cover provides equivalent protection from wind and water erosion as achieved by the standard design in Subsection R315-303-3(4)(a)(ii).

(d) The expected performance of an alternative final cover design shall be documented by the use of an appropriate mathematical model.

(i) The input for the modeling shall include the climatic conditions at the specific landfill site and the soil types that will make up the final cover.

(ii) The model shall:

(A) be run to show the expected performance of the final cover at normal precipitation for a period of time until stability has been reached; and

(B) shall be run to show the expected performance of the final cover during the five wettest years on record at the site or the nearest weather station.

(e) The Director shall use the following criteria as part of the basis for determining if an alternative final cover will be approved:

(i) If the landfill has a liner design that does not use a synthetic material such as HDPE, the model will compare the infiltration through the standard cover as required in Subsection R315-303-3(4)(a) and shall show that the alternative cover performs as well as the standard cover; or

(ii) If the landfill has a liner composed in part of a synthetic material such as HDPE, the model must show an infiltration rate of no greater that 3 millimeters of water per year during any year of the model run.

(f) If a landfill has been constructed using an approved alternative landfill design, the Director may require, on a site-specific basis, the landfill closure design to be more stringent than the standard design specified in Subsection R315-303-3(4)(a) to protect human health or the environment.

(g) In no case shall any modification be made to the final cover, as placed and approved at closure by the Director, unless that modification:

(i) is a necessary repair of the approved final cover;

(ii) maintains or improves the effectiveness of the final cover; and

(iii) is approved by the Director.

(5) Gas Control.

(a) An owner or operator shall design each landfill so that explosive gases are monitored quarterly.

(b) If the concentration of these gases ever exceed the standard set in Subsection R315-303-2(2)(a), the owner or operator must:

(i) immediately take all necessary steps to ensure protection of human health and, within 24 hours or the next business day, notify the Director;

(ii) within seven days of detection, place in the operating record the explosive gas levels detected and a description of the steps taken to protect human health; and

(iii) within 60 days of detection, implement a remediation plan, that has been approved by the Director, for the explosive gas release, place a copy of the plan in the operating record, and notify the Director that the plan has been implemented.

(c) Collection and handling of explosive gases shall not be required if it can be shown that the explosive gases will not support combustion.

(d) The Director may, on a site specific basis, waive the requirement of monitoring explosive gases at a Class II Landfill. The wavier may be granted after:

(i) considering the characteristics of the landfill and the waste stream accepted;

(ii) taking into account climatic and hydrogeologic conditions of the site; and

(iii) completing a public comment period as specified by Section R315-311-3.

(iv) The Director may revoke any waiver from the requirement of monitoring explosive gases if the lack of monitoring explosive gases at the landfill presents a threat to human health or the environment.

(v) The requirement to monitor explosive gases inside buildings at a landfill may not be waived.

(e) A landfill that accepts no municipal waste, or other waste with potential to generate methane during decomposition, is exempt from the gas monitoring requirement of Subsection R315-303-3(5)(a).

(6) Design Drawings.

(a) Design drawings and as built drawings of any engineered structure, including landfill liners, leachate collection systems, run-on/run-off control systems, final covers, ground water monitoring systems, and gas collection systems, shall be signed and sealed by a professional engineer registered

in the State of Utah.

(b) As built drawings shall be submitted to the Director on or before 90 days following the completion of the engineered structure at the landfill.

(7) Other Requirements. An owner or operator shall design each landfill to provide for:

(a) fencing at the property or unit boundary or the use of other artificial or natural barriers to impede entry by the public and large animals. A lockable gate shall be required at the entry to the landfill;

(b) monitoring ground water according to Rule R315-308 using a design approved by the Director. The Director may also require monitoring of:

(i) surface waters, including run-off;

(ii) leachate; and

(iii) subsurface landfill gas movement and ambient air;

(c) weighing or estimating the tonnage of all incoming waste and recording the tonnage in the facility's operation record;

(d) erecting a sign at the facility entrance that identifies at least the name of the facility, the hours during which the facility is open for public use, unacceptable materials, and an emergency telephone number. Other pertinent information may also be included;

(e) adequate fire protection to control any fires that may occur at the facility. This may be accomplished by on-site equipment or by arrangement made with the nearest fire department;

(f) preventing potential harborage in buildings, facilities, and active areas of rat and other vectors, such as insects, birds, and burrowing animals;

(g) minimizing the size of the unloading area and working face as much as possible, consistent with good traffic patterns and safe operation;

(h) approach and exit roads of all-weather construction, with traffic separation and traffic control on-site and at the site entrance; and

(i) communication, such as telephone or radio, between employees working at the landfill and management offices on-site and off-site to handle emergencies.

R315-303-4. Standards for Maintenance and Operation.

(1) Plan of Operation. An owner or operator of a landfill shall maintain and operate the facility to conform to the approved plan of operation.

(2) Operating Details. An owner or operator of a landfill shall operate the facility to:

(a) control fugitive dust generated from roads, construction, general operations, and covering the waste;

(b) allow no open burning;

(c) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance;

(d) prohibit scavenging;

(e) conduct reclamation of facility property in an orderly sanitary manner and in a way that does not interfere with the disposal site operation;

(f) ensure that landfill personnel, trained in landfill operations, are on site when the site is open to the public;

(i) at least one person on site for landfills that receive, on an average annual basis, less than 15,000 tons per year; and

(ii) at least two persons on site, with one person at the active face, for each landfill that receives, on an average annual basis, more than 15,000 tons per year.

(g) control insects, rodents, and other vectors; and

(h) ensure that reserve operational equipment will be available to maintain and meet these standards.

(3) Boundary Posts. An owner or operator of a landfill shall clearly mark the active area boundaries authorized in the permit by placing permanent posts or by using an equivalent method clearly visible for inspection purposes.

(4) Daily and Intermediate Cover.

(a) An owner or operator of a landfill shall, at the close of each day of operation, completely cover the waste with at least six inches of soil or an alternative daily cover as allowed in Subsections R315-303-4(4)(b) through (e).

(b) The following are approved for use as alternative daily covers:

(i) non-hazardous contaminated soil; and

(ii) subject to the conditions contained in Subsection R315-303-4(4)(c):

(A) tarps;

(B) plastic sheets, when designed for landfill cover use;

(C) foam products, when designed for landfill cover use;

(D) products created from cement kiln dust, when designed for landfill cover use;

(E) incinerator ash;

(F) non-hazardous auto shredder residue not otherwise regulated by 40 CFR Part 761;

(G) chipped waste tires; and

(H) spray-on materials, when designed for landfill cover use.

(c) The use of an approved alternative daily cover is subject to the following conditions:

(i) the alternative daily cover may not present a threat to human health or the environment; and

(ii) the alternative daily cover may be used only on a schedule as established by the facility owner or operator and recorded in the facility operating record.

(iii) The facility owner or operator shall establish the schedule for use of the approved alternative cover based on the alternative cover's performance in controlling vectors, fires, odors, blowing, and scavenging. The schedule shall the following requirements:

(A) any schedule established by the facility owner or operator must provide for the placing of six inches of soil cover at least once per week;

(B) no approved alternative daily cover may be used on the day preceding a day the landfill will be closed;

(C) No alternative daily cover may be used on an area of the landfill that will not be covered with waste or an intermediate cover, as required in Subsection R315-303-4(4)(g), within two days; and

(D) The Director may require the use of six inches of soil cover upon finding that use of an alternative cover is not controlling vectors, fires, odors, blowing liter or scavenging.

(iv) The landfill operating record must clearly document the days when an alternative cover was used and the days when soil cover was used.

(v) The Director may revoke the use of any alternative daily cover at any landfill facility if any condition of Subsection R315-303-4(4)(c) is not met or if the alternative daily cover is determined to present a threat to human health or the environment.

(d) Materials not listed in Subsection R315-303-4(4)(b) may be used as alternative daily cover on an infrequent basis when the material meets the requirements of Subsection R315-303-4-(4)(c) and the use is documented in the facility operating record.

(e) Materials not listed in Subsection R315-303-4(4)(b) which a facility owner or operator wants to use on an ongoing basis must be approved by the Director. Director approval is based on the material meeting the requirements of Subsection R315-303-4(4)(c).

(f) The Director may, on a site specific basis, waive the requirement for daily cover of the waste at a landfill that accepts no municipal waste if the owner or operator demonstrates that an alternative schedule for covering the waste does not present a threat to human health or the environment. The demonstration

from the owner or operator of the landfill must include at least the following:

(i) certification that the landfill accepts no municipal waste;

(ii) a detailed list of the waste types accepted by the landfill;

(iii) the alternative schedule on which the waste will be covered; and

(iv) any other operational practices that may reduce the threat to human health or the environment if an alternative schedule for covering the waste is followed.

(v) In granting any wavier from the daily cover requirement, the Director may place conditions on the owner or operator of the landfill as to the frequency of covering, depth of the cover, or type of material used as cover that will minimize the threat to human health or the environment.

(vi) The Director may revoke any waiver from the daily cover requirement if any condition is not met or if the alternative schedule for covering the waste presents a threat to human health or the environment.

(g) If an area of the working face of a landfill that accepts municipal waste will not receive waste for a period longer than 30 days, the owner or operator shall cover the area with a minimum of 12 inches of soil as an intermediate cover or an alternative intermediate cover as approved by the Director.

(i) No alternative intermediate cover will be approved by the Director without application from the owner or operator.

(ii) Approval for an alternative intermediate cover may be granted after:

(A) considering the design of the landfill, waste stream accepted, and waste handling practices; and

(B) taking into account climatic, hydrogeologic, and soil conditions of the site.

(iii) In granting approval for an alternative intermediate cover, the Director may place conditions on the owner or operator of the landfill as to the depth or type of material used and maintenance of the integrity of the cover that will minimize the threat to human health or the environment.

(iv) The Director may revoke the approval of an alternative intermediate cover if any condition is not met or if the use of the alternative intermediate cover is determined to present a threat to human health or the environment.

(5) Monitoring Systems. An owner or operator of a landfill shall maintain the monitoring systems required in Subsection R315-303-3(7)(b).

(6) Recycling Required.

(a) An owner or operator of a landfill at which the general public delivers household solid waste shall provide containers in which the general public may place recyclable materials for which a market exists. The containers shall be placed at a location convenient to the public and shall be accessible to the public during normal hours of facility operation.

(b) An owner or operator may demonstrate alternative means to providing an opportunity for the general public to recycle household solid waste.

(7) Disposal of Hazardous Waste and Waste Containing PCBs.

(a) An owner or operator of a solid waste disposal facility shall not knowingly dispose, treat, store, or otherwise handle hazardous waste or waste containing PCBs except under the following conditions:

(i) hazardous waste:

(A) the waste meets the conditions specified in Subsections R315-2-4; or

(B) the waste meets the conditions specified in 40 CFR 261.5 (1996) as incorporated by reference in Section R315-2-5; or

(ii) waste containing PCB's:

(A) the facility meets the requirements specified in Subsection R315-315-7(3)(a); or

(B) the waste meets the requirements specified in Subsections R315-315-7(2) or (3)(b).

(b) An owner or operator of a solid waste disposal facility shall include and implement, as part of the plan of operation, a plan that will inspect loads or take other steps, as approved by the Director, that will prevent the disposal of prohibited hazardous waste and prohibited waste containing PCBs, including:

(i) inspection frequency and inspection of loads suspected of containing prohibited hazardous waste or prohibited waste containing PCBs;

(ii) inspection in a designated area or at a designated point in the disposal process;

(iii) a training program for the facility employees in identification of prohibited hazardous waste and prohibited waste containing PCBs; and

(iv) maintaining written records of all inspections, signed by the inspector.

(c) If the receipt of prohibited hazardous waste or prohibited waste containing PCBs is discovered, the owner or operator of the facility shall:

(i) notify the Director, the hauler, and the generator within 24 hours;

(ii) restrict the inspection area from public access and from facility personnel; and

(iii) assure proper cleanup, transport, and disposal of the waste.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-304. Industrial Solid Waste Landfill Requirements.
R315-304-1. Applicability.

(1) The requirements of Rule R315-304 apply to each Class III Landfill as specified.

(2) The requirements of Rule R315-304 do not apply to the following materials managed at an industrial facility:

(a) fly ash waste, bottom ash waste, slag waste, or flue gas emission control dust generated primarily from the combustion of coal or other fossil fuels;

(b) wastes from the extraction, beneficiation, and processing of ores and minerals;

(c) electric arc furnace slag, open hearth furnace slag, and other slags generated during carbon steel production; and

(d) cement kiln dust.

R315-304-2. Industrial Landfill Standards for Performance.

Each Class III Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-304-3. Definitions.

Terms used in Rule R315-304 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-304, the following definitions apply.

(1) "Class IIIa Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept:

(a) any nonhazardous industrial waste;

(b) waste that is exempt from hazardous waste regulations under Section R315-2-4; or

(c) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IIIb Landfill" means a landfill as defined by Subsection R315-301-2(9) that may accept any nonhazardous industrial solid waste except:

(a) waste that is exempt from hazardous waste regulations under Section R315-2-4, excluding Subsections R315-2-4(b)(3), (4), (5), (7), and (14), unless approved by the Director; or

(b) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

R315-304-4. Industrial Landfill Location Standards.

(1) Class IIIa Landfills.

(a) A new Class IIIa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IIIa Landfill that is proposed on the site of generation of the industrial solid waste or a lateral expansion of an existing Class IIIa Landfill, shall meet the location standards of Subsections R315-302-1(2)(b), (c), (d), and (e) with respect to geology, surface water, wetlands, and ground water.

(c) An existing Class IIIa Landfill shall not be subject to the location standards of Subsection R315-302-1(2).

(d) An exemption from any location standard of Subsection R315-302-1(2), except the standards for floodplains and wetlands, may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Director.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(2) Class IIIb Landfills.

(a) A new Class IIIb landfill or a lateral expansion of an existing Class IIIb Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);

(iii) the standards with respect to ground water as specified in Subsection R315-302-1(2)(e)(i)(B); and

(iv) the requirements of Subsection R315-302-1(2)(f).

(b) For a lateral expansion of an existing Class IIIb Landfill, an exemption from any location standard of Subsection R315-304-4(2)(a) may be granted by the Director on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Director.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring, or operation than the minimum described in Rule R315-304 to protect human health or the environment.

(c) An existing Class IIIb Landfill shall not be subject to the location standards of Subsection R315-304-4(2)(a).

R315-304-5. Industrial Landfill Requirements.

(1) Each Class III Landfill shall meet the following applicable requirements, as determined by the Director:

(a) the plan of operation requirements of Subsections R315-302-2(2)(a), (b), (c), (d), (g), (i), (j), (k), (l), (m), (n), and (o);

(b) the recordkeeping requirements of Subsections R315-302-2(3)(a), (b)(i), (iii), (iv), and (vi);

(c) the reporting requirements of Subsection R315-302-2(4); and

(d) the inspection requirements of Subsection R315-302-2(5).

(2) Each Class III Landfill shall meet the applicable general requirements for closure and post-closure care of Subsections R315-302-2(6); R315-302-3(2); (3); (4)(a), and (b); (5); (6)(a)(iv) through (vi), (6)(b), and (c); and (7)(a) as determined by the Director.

(a) Each Class IIIa Landfill shall meet the closure requirements of Subsection R315-303-3(4).

(b) Each Class IIIb Landfill shall meet the closure requirements of Subsection R315-305-5(5)(b).

(c) If a Class III Landfill is already subject to the closure and post-closure requirements of another Federal or state agency which are as stringent as specified in Subsections R315-304-5(2)(a) or (b), the landfill may be exempt, upon approval of the Director, from the closure requirements of Subsections R315-304-5(2)(a) or (b).

(3) Standards for Design.

(a) The owner or operator of a Class III Landfill shall design the landfill to minimize the acceptance of liquids and control storm water run-on/run-off as specified in Subsections R315-303-3(1)(b), (c), and (d).

(b) The owner or operator of a Class III Landfill shall design the landfill to meet the requirements of Subsections R315-303-3(7)(a), (c), (e), (f), (g), (h), and (i) as determined by the Director.

(4) Ground Water Monitoring.

(a) The owner or operator of a Class IIIa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(b) Subject to the performance standard of Subsection R315-303-2(1), if the owner or operator of a Class IIIa Landfill is monitoring the ground water beneath the landfill and otherwise meeting the requirements of a discharge permit as issued by the Utah Division of Water Quality, the landfill may be exempt, upon approval of the Director, from the ground water monitoring requirements of Rule R315-308.

(c) A Class IIIb Landfill is exempt from the ground water monitoring requirements of Rule R315-308.

(5) Standards for Operation.

(a) Each Class IIIa Landfill shall meet the standards of Section R315-303-4 except:

(i) for the requirements of Subsections R315-303-4(2)(f) and R315-303-4(6); and

(ii) may be exempt from the daily cover requirements of Subsection R315-303-4(4) upon the demonstration that an alternate schedule for the covering of waste at the landfill will not present a threat to human health or the environment.

(b) Each Class IIIb Landfill shall meet the requirements for operation in Subsections R315-305-4(7) and R315-305-5(2) through (4) as determined by the Director.

(6) Financial Assurance.

(a) The owner or operator of each Class III Landfill shall establish financial assurance as required by Rule R315-309.

(b) If the owner or operator of a Class III Landfill has financial assurance, in effect and active, that covers the costs of closure and post-closure care of the landfill as required by another Federal or state agency which is as stringent as the requirements of Rule R315-309, the landfill may be exempt, upon approval of the Director, from the financial assurance requirements of Rule R315-309.

(7) Permit Requirements.

Each Class III Landfill shall apply for and obtain a permit to operate by meeting the applicable requirements of Rule R315-310.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-305. Class IV and VI Landfill Requirements.
R315-305-1. Applicability.

(1) These standards apply to each facility that landfills only:

(a) construction/demolition waste, inert waste, yard waste, dead animals;

(b) upon meeting the requirements of Section 19-6-804 and Subsections R315-320-3(1) or (2), waste tires and material derived from waste tires; or

(c) upon meeting the requirements of R315-315-8(3), petroleum contaminated soils.

(2) Inert waste used as road building material and fill material are excluded from the requirements of Rule R315-305.

R315-305-2. Class IV and VI Landfill Standards for Performance.

Each Class IV and VI Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-305-3. Definitions.

Terms used in Rule R315-305 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-305, the following definitions apply.

(1) "Class IVa Landfill" means a Class IV Landfill that receives, based on an annual average, over 20 tons of waste per day and may receive, as a component of construction/demolition waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(2) "Class IVb Landfill" means a Class IV Landfill that receives, based on an annual average, 20 tons, or less, of waste per day or demonstrates that no waste from a conditionally exempt small quantity generator of hazardous waste is accepted.

R315-305-4. General Requirements.

(1) Location Standards.

(a) A new Class IVa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IVb or VI Landfill or the expansion of an existing Class IVb or VI Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);

(iii) the standards with respect to ground water as specified in Subsection R315-302-1(2)(e)(i)(B);

(iv) the standards with respect to geology as specified in Subsections R315-302-1(2)(b)(i) and (iv);

(v) if the permit application for a new Class IVb, or VI Landfill requests approval to accept dead animals for disposal, the application shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), (ii), (iv), and (v); and

(vi) The requirements of Subsection R315-302-1(2)(f).

(c) Exemptions from the location standards of Subsection R315-305-4(1)(b)(i), (ii), (iii), (iv), and (v) may be granted by the Director for a new Class IVb or VI Landfill, on a site specific bases, if it is determined that the exemption will cause no adverse impact to human health or the environment.

(i) No exemption may be granted without application to the Director.

(ii) If an exemption is granted, the landfill may be required to meet more stringent design, construction, monitoring, or operation requirements than the minimum described in Rule R315-305 to protect human health or the environment.

(d) An existing Class IVa, IVb, or VI Landfill:

(i) shall not be subject to the location standards of Subsections R315-305-4(1)(a) or R315-305-4(1)(b)(i), (ii), (iii), or (iv); but

(ii) if the current permit of an existing Class IVa, IVb, or VI Landfill does not allow the acceptance of dead animals and the owner or operator requests approval to accept dead animals for disposal, the request to the Director shall document that the landfill also meets the land use compatibility requirements of Subsections R315-302-1(2)(a)(i), (ii), (iv), and (v).

(2) An owner or operator of a Class IV or VI Landfill shall obtain a permit, as set forth in Rule R315-310.

(3) An owner or operator of a Class IV or VI Landfill shall design and operate the landfill to:

(a) prevent the run-on of all surface waters resulting from a maximum flow of a 25-year storm into the active area of the landfill; and

(b) collect and treat, if necessary, the run-off of surface waters and other liquids resulting from a 25-year storm from the active area of the landfill.

(4) An owner or operator of a Class IVa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(5) An owner or operator of a Class IV or VI Landfill shall erect a sign at the facility entrance as specified in Subsection R315-303-3(7)(d).

(6) An owner or operator of a Class IV or VI Landfill shall maintain the applicable records as specified in Subsection R315-302-2(3).

(7) An owner or operator of a Class IV or VI Landfill shall meet the requirements of Subsection R315-302-2(6) and make the required recording with the county recorder.

R315-305-5. Requirements for Operation.

(1) The owner or operator of a Class IV or VI Landfill shall not accept any other form of waste except the wastes specified in Subsection R315-305-1(1).

(2) The owner or operator of a Class IV or VI Landfill shall prevent the disposal of unauthorized waste by ensuring that at least one person is on site during hours of operation and shall prevent unauthorized disposal during off-hours by controlling entry, i.e., lockable gate or barrier, when the facility is not open.

(3) The owner or operator of a Class IV or VI Landfill shall:

(a) minimize the size of the working face as required by Subsection R315-303-3(7)(g);

(b) employ measures to prevent emission of fugitive dusts, when weather conditions or climate indicate that transport of dust off-site is liable to create a nuisance;

(c) meet the requirements of Subsection R315-303-3(1)(a) and (b) to minimize liquids admitted to the landfill;

(d) collect scattered litter as necessary to avoid a fire hazard or an aesthetic nuisance; and

(e) prohibit scavenging.

(4) The owner or operator of a Class IV or VI Landfill shall cover timbers, wood, and other combustible waste with a minimum of six inches of soil, or equivalent, as needed to avoid a fire hazard.

(5) The owner or operator of a Class IV or VI Landfill shall meet the applicable general requirements of closure and post-closure care of Section R315-302-3 as determined by the Director.

(a) The owner or operator of a Class IVa Landfill shall meet the specific closure requirements of Subsection R315-303-3(4).

(b) The owner or operator of a Class IVb or VI Landfill shall close the facility by:

(i) leveling the waste to the extent practicable;

(ii) covering the waste with a minimum of two feet of soil, including six inches of topsoil;

(iii) contouring the cover as specified in Subsection R315-

303-3(4)(a)(i)(B); and

(iv) seeding the cover with grass, other shallow rooted vegetation, or other native vegetation or covering in another manner approved by the Director to minimize erosion.

(v) The Director may approve an alternative final cover design for a Class IVb or VI Landfill if it is documented that the alternative final cover provides equivalent protection from infiltration and erosion as the cover specified in Subsection R315-305-5(5)(b).

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-306. Incinerator Standards.
R315-306-1. Applicability.

(1) These standards apply to any incinerator facility as specified in Subsections R315-306-2(1) and R315-306-3(1).

(2) These standards do not apply to:

(a) an incineration facility which is required to obtain a state or federal hazardous waste plan approval;

(b) a facility burning only untreated woodwaste;

(c) the flaring of gases recovered at a landfill; or

(d) a facility that incinerates or cremates exclusively human or animal remains.

R315-306-2. Requirements for Large Incinerators.

(1) These standards apply to any incinerator facility designed to incinerate more than ten tons of solid waste per day.

(2) A new incinerator facility shall be subject to the location standards of Section R315-302-1 with the exception of the following Subsections: R315-302-1(2)(a)(iv) and (v), R315-302-1(2)(e), and R315-302-1(3).

(3) Each owner or operator of an incinerator facility shall comply with Section R315-302-2. The submitted plan of operation shall also address alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage facility.

(4) The submitted plan of operation shall also contain a written waste identification plan which shall include identification of the specific waste streams to be handled by the facility, generator waste analysis requirements and procedures, waste verification procedures at the facility, generator certification of wastes shipped as being non-hazardous, and record keeping procedures, including a detailed operating record.

(5) Each incinerator facility shall be surrounded by a fence, trees, shrubbery, or natural features so as to control access and be screened from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building. Each site shall also have an adequate buffer zone of at least 50 feet from the operating area to the nearest property line in areas zoned residential to minimize noise and dust nuisances.

(6) Solid waste shall be stored temporarily in storage compartments, containers or areas specifically designed to store wastes. Storage of wastes other than in specifically designed compartments, containers or areas is prohibited. Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as may be required to maintain the plant in a sanitary and clean condition.

(7) A composite sample of the ash and residues from each incinerator facility shall be taken according to a sampling plan approved by the Director.

(a) The sample shall be analyzed by the U.S. EPA Test Method 1311 as provided in 40 CFR Part 261, Appendix II, 2000 ed., Toxic Characteristics Leaching Procedure (TCLP) to determine if it is hazardous.

(b) If the ash and residues are found to be nonhazardous, they shall be disposed at a permitted landfill or recycled.

(c) If the ash and residues are found to be hazardous, they shall be disposed in a permitted hazardous waste disposal site.

(8) Each incinerator must be located, designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(9) An incinerator must collect and treat all run-off from the active areas of the site that may result from a 25-year storm event, and divert all run-on for the maximum flow of a 25-year storm around the site.

(10) All-weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion hazards, dust, and noise pollution.

(11) Access to the incinerator site shall be controlled by means of a complete perimeter fence or other features and gates which shall be locked when an attendant is not at the gate to prevent unauthorized entry of persons or livestock to the facility.

(12) The plan of operation shall include a training program for new employees and annual review training for all employees to ensure safe handling of waste and proper operation of the equipment.

(13) Each owner or operator shall post signs at the facility which indicate the name, hours of operation, necessary safety precautions, types of wastes that are prohibited, and any other pertinent information.

(14) Each owner or operator of an incinerator facility shall be required to provide recycling facilities in a manner equivalent to those specified for landfills in Subsection R315-303-4(6).

(15) Each owner or operator of an incinerator facility shall implement a plan to inspect loads or take other steps, as approved by the Director, to prevent the disposal of prohibited hazardous waste or prohibited waste containing PCB's in a manner equivalent to those specified for landfills in Subsection R315-303-4(7).

(16) Each owner or operator shall close its incinerator by removing all ash, solid waste, and other residues to a permitted facility.

(17) Each owner or operator of an incinerator facility shall provide financial assurance to cover the costs for closure of the facility that meets the requirements of Rule R315-309.

R315-306-3. Requirements for Small Incinerators.

(1) Applicability.

(a) These requirements apply to any incinerator designed to incinerate ten tons, or less, of solid waste per day and incinerator facilities that incinerate solid waste only from on-site sources.

(b) If an incinerator processes 250 pounds, or less, of solid waste per week, the requirements of Section R315-306-3 do not apply and a permit from the Director is not required but the facility may be regulated by other local, state, or federal requirements.

(2) Requirements.

(a) Each owner and operator of an incinerator facility shall submit a plan of operation to the Director that meets the requirements of Section R315-302-2.

(b) The submitted plan of operation shall also address:

(i) alternative storage, or disposal plans for all breakdowns that would result in overfilling the storage areas;

(ii) identification of the specific waste streams to be handled by the facility;

(iii) generator waste analysis requirements and procedures;

(iv) waste verification procedures at the facility;

(v) generator certification of wastes shipped as being nonhazardous; and

(vi) recordkeeping procedures, including a detailed operating record.

(c) Solid waste shall be stored temporarily only in storage compartments, containers, or areas specifically designed to store wastes.

(i) Storage of wastes other than in specifically designed compartments, containers or areas is prohibited.

(ii) Equipment and space shall be provided in the storage and charging areas, and elsewhere as needed, to allow periodic cleaning as necessary to maintain the plant in a sanitary and clean condition.

(d) Incinerator ash and residues from any incinerator shall be sampled, analyzed, and disposed as specified in Subsection R315-306-2(7).

(e) The owner or operator of the incinerator shall prevent the disposal of prohibited hazardous waste or prohibited waste containing PCB's as specified in Subsection R315-306-2(15).

(f) The incinerator must be designed, constructed and operated in a manner to comply with appropriate state and local air pollution control authority emission and operating requirements.

(g) The plan of operation shall include a training program for new employees and annual review training for all applicable employees to ensure safe handling of waste and proper operation of the equipment.

(h) The owner or operator of the incinerator shall close the facility by removing all solid waste, ash, and other residues to a permitted solid waste disposal facility.

(i) The owner or operator of the incinerator facility shall provide financial assurance to cover the costs for closure of the facility that meets the requirements of Rule R315-309.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-307. Landtreatment Disposal Standards.
R315-307-1. Applicability.

(1) These standards apply to any facility that engages in the landtreatment, landfarming, or landspreading disposal of solid waste.

(2) These standards do not apply to:

(a) a facility that uses sewage sludge, woodwaste or other primarily organic sludge in recycling operations as specified in Section R315-312-4;

(b) agricultural solid wastes resulting from the operation of a farm, including farm animal manure and agricultural residues;

(c) inert waste[or demolition waste; or

(d) industrial solid waste facilities.

(3) The landtreatment of domestic sewage sludge and septage is exempt from the requirements of Rule R315-307 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

(4) The owner or operator of a landtreatment disposal facility shall meet the standards for performance specified in Subsection R315-303-2.

(5) The owner or operator of a landtreatment disposal facility shall meet the location standards of Section R315-302-1.

R315-307-2. Standards for Design.

(1) The owner or operator of a landtreatment disposal facility shall design the facility to provide interim waste storage areas that meet the requirements for piles, as specified in Rule R315-314.

(2) The facility shall have systems to collect and treat all run-off from a 25 year storm, and divert all run-on for the maximum flow of a 25 year storm around the active area.

(3) The facility shall be designed to avoid standing water anywhere on the active area.

(4) The facility shall be designed to avoid slopes and other features that will lead to soil and waste erosion, unless contour plowing or other measures are taken to avoid erosion.

(5) The owner or operator shall monitor ground water according to Rule R315-308.

(6) The owner or operator shall control access to the facility by fencing or other means and erect a sign as specified in Subsection R315-303-3(6)(d).

R315-307-3. Standards for Maintenance and Operation.

The owner or operator of a landtreatment disposal facility shall maintain and operate the facility to:

(1) avoid the disposal of garbage or infectious waste;

(2) avoid applying wastes at rates greater than ten times agronomic rates using the proposed cover crop, or depths greater than would allow for disking the soil by tracked vehicles;

(3) provide disking of soils during the growing season and after each application of waste to maintain aerobic soil conditions, minimize odors and lessen run-off;

(4) avoid applying waste to any active area having standing water;

(5) conform to the approved plan of operation and all other applicable requirements of Section R315-302-2;

(6) provide for a written contract between landowners, waste generators, waste haulers, and waste operators requiring compliance with rules as a condition of the contract; and

(7) avoid food-chain crops during the active life of the facility and until demonstrated to be safe, after closure, according to the closure and post-closure plans filed with the plan of operation. Specific approval in writing from the Director is required for any landspreading disposal facility that is used to raise food-chain crops after closure.

R315-307-4. Standards for Closure.

(1) The owner or operator of a landtreatment disposal facility shall:

(a) close in a manner to comply with Section R315-302-3; and

(b) meet the financial assurance requirements of Rule R315-309.

(3) Upon closure of a landtreatment disposal facility, the owner or operator shall record with the county recorder as part of the record of title the fact that the property has been used as a landtreatment disposal facility pursuant to Subsection R315-302-2(6).

KEY: solid waste management, waste disposal

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-308. Ground Water Monitoring Requirements.
R315-308-1. Applicability.

(1) Each existing landfill, pile, or land treatment disposal facility that is required to perform ground water monitoring shall comply with the ground water monitoring requirements according to the compliance schedule as established by the Director during the permitting or the permit renewal process.

(2) Prior to the acceptance of waste, each new landfill, pile, or land treatment disposal facility that is required to perform ground water monitoring shall have:

(a) a site specific ground water monitoring plan approved by the Director; and

(b) the ground water monitoring system complete and operational.

(3) Ground water monitoring requirements may be waived by the Director if the owner or operator of a solid waste disposal facility can demonstrate that there is no potential for migration of hazardous constituents from the facility to the ground water during the active life of the facility and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Director, and must be based upon:

(a) site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(b) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(4) Once a ground water monitoring system and program has been established at a disposal facility, ground water monitoring shall continue to be conducted throughout the active life, closure, and post-closure care periods as specified by the Director.

(5) A facility that has a ground water monitoring alternative approved under Subsection R315-302-1(2)(e)(vi) is subject to the standards specified in Subsection R315-303-2(1) and the approved alternative shall be revoked by the Director if the operation of the facility impacts groundwater.

R315-308-2. Ground Water Monitoring Requirements.

(1) Each facility owner or operator that is required to conduct ground water monitoring shall formulate a ground water monitoring plan that addresses the requirements of Section R315-308-2.

(2) The ground water monitoring system must consist of at least one background or upgradient well and two downgradient wells, installed at appropriate locations and depths to yield ground water samples from the uppermost aquifer and all hydraulically connected aquifers below the facility, cell, or unit. The downgradient wells shall be designated as the point of compliance and must be installed at the closest practicable distance hydraulically down gradient from the unit boundary not to exceed 150 meters (500 feet) and must also be on the property of the owner or operator:

(a) the upgradient well must represent the quality of background water that has not been affected by leakage from the active area; and

(b) the downgradient wells must represent the quality of ground water passing the point of compliance. Additional wells may be required by the Director in complicated hydrogeological settings or to define the extent of contamination detected.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must allow collection of representative ground water samples. Wells must be constructed in such a manner as to prevent contamination of the samples, the sampled strata, and between aquifers and water-bearing strata. All monitoring wells and all other devices and equipment used in the monitoring program must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(4) The ground water monitoring program must include at a minimum, procedures and techniques for:

(a) well construction and completion;

(b) decontamination of drilling and sampling equipment;

(c) sample collection;

(d) sample preservation and shipment;

(e) analytical procedures and quality assurance;

(f) chain of custody control or sample tracking, as approved by the Director; and

(g) procedures to ensure employee health and safety during well installation and monitoring.

(5) Each facility shall utilize a laboratory, that is certified by the state for the test methods used, to complete tests, using methods with appropriate detection levels, on samples for the following:

(a) during the first year of facility operation after wells are installed or an alternative schedule as approved by the Director, a minimum of eight independent samples from the upgradient and four independent samples from each downgradient well for all parameters listed in Section R315-308-4 to establish background concentrations;

(b) after background levels have been established, a minimum of one sample, semiannually, from each well, background and downgradient, for all parameters listed in Section R315-308-4 as a detection monitoring program;

(i) In the detection monitoring program, the owner or operator must determine ground water quality at each monitoring well on a semiannual basis during the life of an active area, including the closure period, and the post-closure care period.

(ii) The owner or operator must express the ground water quality at each monitoring well in a form appropriate for the determination of statistically significant changes;

(c) field-measured pH, water temperature, and water conductivity must accompany each sample collected;

(d) analysis for the heavy metals and the organic constituents from Section R315-308-4 shall be completed on unfiltered samples; and

(e) the Director may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(f) The following information shall be placed in the facility's operating record and a copy submitted to the Director as the ground water monitoring results to be included in the annual report required by Subsection R315-302-2(4):

(i) a report on the procedures, including the quality control/quality assurance, followed during the collection of the ground water samples;

(ii) the results of the field measured parameters required by Subsections R315-308-2(5)(c) and R315-308-2(7);

(iii) a report of the chain of custody and quality control/quality assurance procedures of the laboratory;

(iv) the results of the laboratory analysis of the constituents specified in Section R315-308-4 or an alternative list of constituents approved by the Director:

(A) the results of the laboratory analysis shall list the

constituents by name and CAS number; and

(B) a list of the detection limits and the test methods used; and

(v) the statistical analysis of the results of the ground water monitoring as required by Subsection R315-308-2(8).

(vi) The results of the ground water monitoring may be submitted in electronic format.

(6) After background constituent levels have been established, a ground water quality protection standard shall be set by the Director which shall become part of the ground water monitoring plan. The ground water quality protection standard will be set as follows.

(a) For constituents with background levels below the standards listed in Section R315-308-4 or as listed in Section R315-308-5, which presents the ground water protection standards that are available for the constituents listed as Appendix II in 40 CFR 258, the ground water quality standards of Sections R315-308-4 and R315-308-5 shall be the ground water quality protection standard.

(b) If a constituent is detected and a background level is established but the ground water quality standard for the constituent is not included in Section R315-308-4 or Section R315-308-5 the ground water quality protection standard for that constituent shall be set according to health risk standards.

(c) If a constituent is detected and a background level is established and the established background level is higher than the value listed in Section R315-308-4, R315-308-5 or the level established according to Subsection R315-308-2(6)(b), the ground water quality protection standard shall be the background concentration.

(7) The ground water monitoring program must include a determination of the ground water surface elevation each time ground water is sampled.

(8) The owner or operator shall use a statistical method for determining whether a significant change has occurred as compared to background. The Director will approve such a method as part of the ground water monitoring plan. Possible statistical methods include:

(a) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(b) an analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(c) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(d) a control chart approach that gives control limits for each constituent; or

(e) another statistical test method approved by the Director.

(9) For both detection monitoring, as described in Subsection R315-308-2(5), and assessment monitoring, as described in Subsection R315-308-2(12), the Director may specify additional or fewer sampling and analysis events, no less than annually, depending upon the nature of the ground water or the waste on a site-specific basis considering:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill unit and downgradient monitoring well screen (minimum distance of travel); and

(e) resource value of the aquifer.

(10) The owner or operator must determine and report the ground water flow rate and direction in the upper most aquifer each time the ground water is sampled.

(11) If the owner or operator determines that there is a statistically significant increase over background in any parameter or constituent at any monitoring well at the compliance point, the owner or operator must:

(a) within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, enter the information in the operating record and notify the Director of this finding in writing. The notification must indicate what parameters or constituents have shown statistically significant changes; and

(b) immediately resample the ground water in all monitoring wells, both background and downgradient, or in a subset of wells specified by the Director, and determine:

(i) the concentration of all constituents listed in Section R315-308-4, including additional constituents that may have been identified in the approved ground water monitoring plan;

(ii) if there is a statistically significant increase over background of any parameter or constituent in any monitoring well at the compliance point; and

(iii) notify the Director in writing within seven days of the completion of the statistical analysis of the sample results.

(c) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Director and entered in the operating record. If a successful demonstration is made and documented, the owner or operator may continue monitoring as specified in Subsection R315-308-2(5)(b).

(12) If, after 90 days, a successful demonstration as stipulated in Subsection R315-308-2(11)(c) is not made, the owner or operator must initiate the assessment monitoring program required as follows:

(a) within 14 days of the determination that a successful demonstration is not made, take one sample from each downgradient well and analyze for all constituents listed as Appendix II in 40 CFR Part 258, 2001 ed., which is adopted and incorporated by reference.

(b) for any constituent detected from Appendix II, 40 CFR Part 258, in the downgradient wells a minimum of four independent samples from the upgradient and four independent samples from each downgradient well must be collected, analyzed, and statistically evaluated to establish background concentration levels for the constituents; and

(c) within 14 days of the completion of the statistical analysis of the sample results and within 30 days of the receipt of the sample results, place a notice in the operation record and notify the Director in writing identifying the Appendix II, 40 CFR Part 258, constituents and their concentrations that have been detected as well as background levels. The Director shall establish a ground water quality protection standard pursuant to Subsection R315-308-2(6) for any Appendix II, 40 CFR Part 258, constituent detected in the downgradient wells.

(d) The owner or operator shall thereafter resample:

(i) at a minimum, all downgradient wells on a quarterly basis for all constituents in Section R315-308-4, or the alternative list that may have been approved as part of the permit, and for those constituents detected from Appendix II, 40 CFR Part 258;

(ii) the downgradient wells on an annual basis for all

constituents in Appendix II, 40 CFR Part 258; and

(iii) statistically analyze the results of all ground water monitoring samples.

(e) The Director may specify additional or fewer constituents depending upon the nature of the ground water or the waste on a site specific basis considering:

(i) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(ii) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the landfill;

(iii) the detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) the background concentration or values and coefficients of variation of monitoring parameters or constituents in the ground water.

(f) If after two consecutive sampling events, the concentrations of all constituents being analyzed in Subsection R315-308-2(12)(d)(i) are shown to be at or below established background values, the owner or operator must notify the Director of this finding and may, upon the approval of the Director, return to the monitoring schedule and constituents as specified in Subsection R315-308-2(5)(b).

(13) If one or more constituents from Section R315-308-4 or the approved alternative list, or from those detected from Appendix II, 40 CFR Part 258, are detected at statistically significant levels above the ground water quality protection standard as established pursuant to Subsection R315-308-2(6) in any sampling event, the owner or operator must:

(a) within 14 days of the receipt of this finding, place a notice in the operating record identifying the constituents and concentrations that have exceeded the ground water quality standard. Within the same time period, the owner or operator must also notify the Director and all appropriate local governmental and local health officials that the ground water quality standard has been exceeded;

(b) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well and analyze the sample for the constituents in Section R315-308-4 or the approved alternative list and the detected constituents from Appendix II, 40 CFR Part 258; and

(d) notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Subsections R315-308-2(13)(b) and (13)(c).

(e) The owner or operator may demonstrate that a source other than the solid waste disposal facility caused the contamination or that the statistically significant change resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist and approved by the Director and entered in the operating record. If a successful demonstration is made, documented and approved, the owner or operator may continue monitoring as specified in Subsection R315-308-2(12)(d) or Subsection R315-308-2(12)(e) when applicable.

R315-308-3. Corrective Action Program.

(1) If, within 90 days, a successful demonstration as stated in Subsection R315-308-2(13)(e) is not made, the owner or operator must:

(a) continue to monitor as required in Subsection R315-308-2(12)(d).

(b) take any interim measures as required by the Director or as necessary to ensure the protection of human health and the environment; and

(c) assess possible corrective action measures for the current conditions and circumstances of the disposal facility, addressing at least the following:

(i) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control exposure to any residual contamination;

(ii) time required to begin and complete the remedy;

(iii) the costs of remedy implementation;

(iv) public health or environmental requirements that may substantially affect implementation of the remedy; and

(v) prior to the selection of a remedy, discuss the results of the corrective measures assessment in a public meeting with interested and affected parties.

(d) Based on the results of the corrective measures assessment conducted and the comments received in the public meeting, the owner or operator must select a remedy which shall be submitted to the Director.

(i) The corrective action remedy must:

(A) be protective of human health and the environment;

(B) use permanent solutions that are within the capability of best available technology;

(C) attain the established ground water quality standard;

(D) control the sources of release so as to reduce or eliminate, to the maximum extent practicable, further releases of contaminants into the environment that may pose a threat to human health or the environment; and

(E) be approved by the Director.

(ii) Within 14 days after the selection of the remedy the owner or operator must:

(A) amend the corrective action program required by Subsection R315-302-2(2)(e) if necessary and send a report to the Director for approval describing the selected remedy and amendments, along with a schedule of implementation and estimated time of completion; and

(B) put in place the financial assurance mechanism as required by Rule R315-309 for corrective action and notify the Director of the financial assurance mechanism and its effective date.

(2) Upon approval of the selected corrective action remedy, the Director will notify the owner or operator of such approval and will require that the corrective action plan proceed according to the approved schedule.

(a) The Director may also require facility closure if the ground water quality standard is exceeded and, in addition, may revoke any permit and require reapplication.

(b) The Director or the owner or operator may determine, based on information developed after implementation of the corrective action plan, that compliance with the requirements of Subsection R315-308-3(1)(d)(i) of this section are not being achieved through the remedy selected. In such a case, the owner or operator must implement other methods or techniques, upon approval by the Director, that could practicably achieve compliance with the requirements.

(c) Upon completion of the remedy, the owner or operator shall notify the Director. The notification shall contain certification signed by the owner or operator and a qualified ground-water scientist that the concentration of contaminant constituents have been reduced to levels below the specified limits of the ground water quality standard for a period of three years or an alternative length of time specified by the Director. Upon approval of the Director the owner or operator shall:

(i) terminate corrective action measures;

(ii) continue detection monitoring as required in Subsection R315-308-2(5)(b); and

(iii) be released from the requirements of financial assurance for corrective action.

R315-308-4. Constituents for Detection Monitoring.

The table lists the constituents for detection monitoring as specified by Subsection R315-308-2(5), the CAS number for the constituents, and the ground water quality standard for the constituents for any facility that is required to monitor ground water under Rule R315-308.

TABLE

Constituents for Detection Monitoring

Inorganic Constituents	CAS	Ground Water Protection Standard (mg/l)
Ammonia (as N)	7664-41-7	
Carbonate/Bicarbonate		
Calcium		
Chemical Oxygen Demand (COD)		
Chloride		
Iron	7439-89-6	
Magnesium		
Manganese	7439-96-5	
Nitrate (as N		
pH		
Potassium		
Sodium		
Sulfate		
Total Dissolved Solids (TDS)		
Total Organic Carbon (TOC)		
Heavy Metals		
Antimony	7440-36-0	0.006
Arsenic	7440-38-2	0.01
Barium	7440-39-3	2
Beryllium	7440-41-7	0.004
Cadmium	7440-43-9	0.005
Chromium		0.1
Cobalt	7440-48-4	2
Copper	7440-50-8	1.3
Lead		0.015
Mercury	7439-97-6	0.002
Nickel	7440-02-0	0.1
Selenium	7782-49-2	0.05
Silver	7440-22-4	0.1
Thallium		0.002
Vanadium	7440-62-2	0.3
Zinc	7440-66-6	5
Organic Constituents		
Acetone	67-64-1	4
Acrylonitrile	107-13-1	0.1
Benzene	71-43-2	0.005
Bromochloromethane	74-97-5	0.01
Bromodichloromethane[1]	75-27-4	0.1
Bromoform[1]	75-25-2	0.1
Carbon disulfide	75-15-0	4
Carbon tetrachloride	56-23-5	0.005
Chlorobenzene	108-90-7	0.1
Chloroethane	75-00-3	15
Chloroform[1]	67-66-3	0.1
Dibromochloromethane[1]	124-48-1	0.1
1,2-Dibromo-3-chloropropane	96-12-8	0.0002
1,2-Dibromoethane	106-93-4	0.00005
1,2-Dichlorobenzene (ortho)	95-50-1	0.6
1,4-Dichlorobenzene (para)	106-46-7	0.075
trans-1,4-Dichloro-2-butene	110-57-6	
1,1-Dichloroethane	75-34-3	4
1,2-Dichloroethane	107-06-2	0.005
1,1-Dichloroethylene	75-35-4	0.007
cis-1,2-Dichloroethylene	156-59-2	0.07
trans-1,2-Dichloroethylene	156-60-5	0.1
1,2-Dichloropropane	78-87-5	0.005
cis-1,3-Dichloropropene	10061-01-5	0.002
trans-1,3-Dichloropropene	10061-02-6	0.002
Ethylbenzene	100-41-4	0.7
2-Hexanone	591-78-6	1.5
Methyl bromide	74-83-9	0.01
Methyl chloride	74-87-3	0.003
Methylene bromide	74-95-3	0.4
Methylene chloride	75-09-2	0.005
Methyl ethyl ketone	78-93-3	0.17
Methyl iodide	74-88-4	
4-Methyl-2-pentanone	108-10-1	3
Styrene	100-42-5	0.1
1,1,1,2-Tetrachloroethane	630-20-6	0.07
1,1,2,2-Tetrachloroethane	79-34-5	0.005
Tetrachloroethylene	127-18-4	0.005
Toluene	108-88-3	1
1,1,1-Trichloroethane	71-55-6	0.2
1,1,2-Trichloroethane	79-00-5	0.005
Trichloroethylene	79-01-6	0.005
Trichlorofluoromethane	75-69-4	10
1,2,3-Trichloropropane	96-18-4	0.04
Vinyl acetate	108-05-4	37
Vinyl Chloride	75-01-4	0.002
Xylenes	1330-20-7	10

[1]The ground water protection standard of 0.1 mg/l is for the total of Bromodichloromethane, Bromoform, Chloroform, and Dibromochloromethane.

R315-308-5. Solid Waste Ground Water Quality Protection Standards for 40 CFR 258 Appendix II Constituents.

The table lists the CAS number for each constituent and the ground water quality protection standards which are currently available for the 40 CFR 258 Appendix II constituents required for assessment monitoring of ground water at a solid waste facility as specified by Subsection R315-308-2(12).

TABLE

Appendix II Protection Standards

Appendix II Constituent	CAS	Ground Water Protection Standard (mg/l)
2,4-D	94-75-7	0.07
2,4,5-T	93-76-5	0.37
2,4,5-TP	93-72-1	0.05
Anthracene	120-12-7	10
Benzo(a)pyrene	50-32-8	0.0002
bis(2-Ethylhexy)phthalate	117-81-7	0.006
Chlordane	57-74-9	0.002
Cyanide	57-12-5	0.2
Dinoseb	88-85-7	0.007
Endrin	72-20-8	0.002
Heptachlor	76-44-8	0.0004
Heptachlor epoxide	1024-57-3	0.0002
Hexachlorobenzene	118-74-1	0.001
Hexachlorocyclopentadiene	77-47-4	0.05
Lindane	58-89-9	0.0002
Methoxychlor	72-43-5	0.04
Pentachlorophenol	87-86-5	0.001
Polychlorinated biphenyls(PCBs)	1336-36-3	0.0005
Tin	7440-31-5	21.9
Toxaphene	8001-35-2	0.003
1,2,4-Trichlorobenzene	120-82-1	0.07

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-309. Financial Assurance.
R315-309-1. Applicability.

(1) The owner or operator of any solid waste disposal facility requiring a permit shall establish financial assurance sufficient to assure adequate closure, post-closure care, and corrective action, if required, of the facility by compliance with one or more financial assurance mechanisms acceptable to and approved by the Director.

(2) Financial assurance is not required for a solid waste disposal facility that is owned or operated by the State of Utah or the Federal government.

(3) Existing Facilities.

(a) An existing facility shall have the financial assurance mechanism in place and effective according to the compliance schedule as established for the facility by the Director.

(b) In the case of corrective action, the financial assurance mechanism shall be in place and effective no later than 120 days after the corrective action remedy has been selected.

(4) A new facility or an existing facility seeking lateral expansion shall have the financial assurance mechanism in place and effective before the initial receipt of waste at the facility or the lateral expansion.

R315-309-2. General Requirements.

(1) A financial assurance plan, including the assurance mechanism proposed for use, shall be submitted:

(a) for new facilities, upon initial permit application; and

(b) for existing facilities, to meet the effective dates specified in Subsection R315-309-1(3).

(2) The financial assurance shall be updated each year as part of the annual report required by Subsection R315-302-2(4) to adjust for inflation or facility modification that would affect closure or post-closure care costs. The annual update of the financial assurance shall be reviewed and must be approved by the Director prior to implementation.

(3) Financial assurance cost estimates shall be based on a third party preforming closure or post-closure care.

(a) The closure cost estimate shall be based on the most expensive cost to close the largest area of the disposal facility ever requiring a final cover at any time during the active life in accordance with the closure plan and at a minimum must contain the following elements if applicable:

(i) the cost of obtaining, moving, and placing the cover material;

(ii) the cost of final grading of the cover material;

(iii) the cost of moving and placing topsoil on the final cover;

(iv) the cost of fertilizing, seeding, and mulching or other approved method; and

(v) the cost of removing any stored items or materials, buildings, equipment, or other items or materials not needed at the closed facility.

(b) The post-closure care cost estimate shall be based on the most expensive cost of completing the post-closure care reasonably expected during the post-closure care period and must contain the following elements:

(i) ground water monitoring, if required, including number of monitor wells, parameters to be monitored, frequency of sampling, and cost per sampling;

(ii) leachate monitoring and treatment if necessary;

(iii) gas monitoring and control if required; and

(iv) cover stabilization which will include an estimate of the area and cost for expected annual work to repair residual settlement, control erosion, or reseed.

(4) Any facility for which financial assurance is required for post-closure care must have a financial assurance mechanism, which will cover the costs of post-closure care, in effect and active until the Director determines that the post-closure care is complete.

(5) Financial assurance for corrective action shall be required only in cases of known releases of contaminants from a facility and shall be a current cost estimate for corrective action based on the most expensive cost of a third party performing the corrective action that may be required.

R315-309-3. General Requirements for Financial Assurance Mechanisms.

(1) Any financial assurance mechanism in place for a solid waste facility:

(a) must be legally valid, binding, and enforceable under Utah and Federal law;

(b) must ensure that funds will be available in a timely fashion when needed; and

(c) any financial assurance mechanism that guarantees payment rather than performance, but does not allow the Director to approve partial payments to a third party, shall establish a standby trust at the time the financial assurance mechanism is established.

(i) In the case of a financial assurance mechanism for which the establishment of a standby trust is required, the standby trust fund shall meet the requirements of Subsections R315-309-4(1), (2), and (4).

(ii) Payments from the financial assurance mechanism shall be deposited directly into the standby trust fund and payments from the standby trust fund must be approved by the Director and the trustee.

(2) The owner or operator of a solid waste facility that is required to provide financial assurance:

(a) shall submit the required documentation of the financial assurance mechanism to the Director;

(b) prior to the financial assurance mechanism becoming effective and active for a solid waste facility, the mechanism must be approved by the Director; and

(c) Financial assurance mechanism documents submitted to the Director shall be signed originals or signed duplicate originals.

(3) The owner or operator of a solid waste facility may establish financial assurance by any mechanism that meets the requirements of Subsection R315-309-1(1) as approved by the Director.

(4) The owner or operator of a solid waste facility may establish financial assurance by a combination of mechanisms that together meet the requirements of Subsection R315-309-1(1) as approved by the Director. Except for the conditions specified in Subsection R315-309-8(6)(c), financial assurance mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments.

R315-309-4. Trust Fund.

(1) The owner or operator of a solid waste facility may establish a trust fund and appoint a trustee as a financial assurance mechanism. The trust fund and trustee must be with an entity that has the authority to establish trust funds and act as a trustee and whose operations are regulated and examined by a Federal or state agency.

(2) The owner or operator shall submit a signed original of the trust agreement to the Director for approval and shall place a signed original of the trust agreement in the operating record of the solid waste disposal facility.

(3) Payments into the trust fund must be made annually by the owner or operator according to the following schedule:

(a) for a trust fund for closure and post-closure care, annual payments that will ensure the availability of sufficient funds within the permit term or the remaining life of the facility, whichever is shorter for the cost estimates required in Subsection R315-309-2(3). The initial payment into the trust fund must be made, for a new facility or a lateral expansion of

an existing facility, before the initial receipt of waste and for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); or

(b) for a trust fund for corrective action, annual payments that will ensure the availability of sufficient funds within one-half of the estimated length in years of the corrective action program for the cost estimate required by Subsection R315-309-2(5). Payments shall be determined as follows:

(i) The first payment shall be at least equal to one-half of the current cost estimate for the corrective action divided by one-half the estimated length of the corrective action program. The initial payment into the trust fund shall be made in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(ii) The amount of subsequent payments must be determined by the following formula: Next Payment = (RB-CV)/Y where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total cost that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator, or other person authorized to conduct closure, post-closure, or corrective action may request reimbursement from the trustee for closure, post-closure, or corrective action costs.

(a) Prior to the release of funds by the trustee, the request for reimbursement must be approved by the Director. The Director shall act upon the reimbursement request within 30 days of receiving the request.

(b) After receiving approval from the Director, the request for reimbursement may be granted by the trustee only if sufficient funds are remaining to cover the remaining costs and if justification and documentation of the costs is placed in the operating record.

(c) The owner or operator shall notify the Director that documentation for the reimbursement has been placed in the operating record and that the reimbursement has been received.

R315-309-5. Surety Bond Guaranteeing Payment or Performance.

(1) The owner or operator of a solid waste facility may provide a surety bond for a financial assurance mechanism. The bond must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(2) The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator must notify the Director that a copy of the bond has been placed in the operating record.

(3) The penal sum of the bond must be in an amount at least equal to the closure, post-closure, or corrective action cost estimates of Subsection R315-309-2(3) or Subsection R315-309-2(5), whichever is applicable.

(4) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(a) In the case of a payment bond, the surety shall pay the costs of closure and post-closure care if the owner or operator fails to complete closure and post-closure care activities.

(b) In the case of a performance bond, the surety shall perform closure and post-closure care on behalf of the owner or operator if the owner or operator fails to complete closure and post-closure care activities.

(5) The surety bond guaranteeing payment or performance shall contain provisions preventing cancellation except under the following conditions:

(a) if the surety sends notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of the cancellation date; or

(b) if an alternative financial assurance mechanism has been obtained by the owner or operator.

R315-309-6. Insurance.

(1) The owner or operator of a solid waste facility may provide insurance as a financial assurance mechanism. The insurance must be effective, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste or, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3).

(2) At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states, and the owner or operator must notify the Director that a copy of the insurance policy has been placed in the operating record.

(3) The insurance policy must guarantee that funds will be available to close the facility or unit and provide post-closure care or provide corrective action, if applicable. The policy must also guarantee that the insurer will be responsible for paying out funds, as directed in writing by the Director, to the owner or operator or other person authorized to conduct closure, post-closure, or corrective action, if applicable, up to an amount equal to the face amount of the policy.

(4) The insurance policy must be issued for a face amount at least equal to the closure, post-closure, or corrective action cost estimates required by Subsection R315-309-2(3) or Subsection R315-309-2(5), whichever is applicable.

(5) An owner or operator, or other authorized person may receive reimbursements for closure, post-closure, or corrective action, if applicable, if the remaining value of the policy is sufficient to cover the remaining costs of the work required and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the Director that the documentation and justification for the reimbursement has been placed in the operating record and that the reimbursement has been received.

(6) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator.

(7) The insurance policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance.

(8) The insurer shall certify through the use of an insurance endorsement specified by the Director that the policy issued provides insurance covering closure costs, post-closure costs, or corrective action costs.

R315-309-7. Letter of Credit.

(1) The owner or operator of a solid waste facility may provide a letter of credit as a financial assurance mechanism. The letter of credit must be irrevocable and issued for a period of at least one year in the amount at least equal to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care or the cost estimate as required by Subsection R315-309-2(5) for corrective action, if necessary.

(2) The institution issuing the letter of credit must be an entity which has the authority to issue a letter of credit and whose operations are regulated and examined by a Federal or state agency.

(3) The letter of credit must be effective for closure and post-closure care:

(a) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(b) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(c) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(4) The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has elected not to extend the letter of credit by sending notice by certified mail to the owner or operator and the Director 120 days in advance of the expiration.

(5) If the letter of credit is not extended by the issuing institution, the owner or operator shall obtain alternate financial assurance which will become effective on or before the expiration date.

R315-309-8. Local Government Financial Test.

(1) The terms used in Section R315-309-8 are defined as follows.

(a) "Total revenues" means the revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue form funds managed by local government on behalf of a specific third party.

(b) "Total expenditures" means all expenditures excluding capital outlays and debt repayments.

(c) "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(d) "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) A local government owner or operator of a solid waste facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate as required by Subsection R315-309-2(5) for corrective action, if required, or up to the amount specified in Subsection R315-309-8(6), which ever is less, by meeting the following requirements.

(a) If the local government has outstanding, rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or other guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's or AAA, AA, A, or BBB, as issued by Standard and Poor's on such general obligation bonds.

(b) If the local government has no outstanding general obligation bonds, the local government shall satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(c) The local government must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant.

(d) The local government must place a reference to the closure and post-closure care costs assured through the financial test into the next comprehensive annual financial report and in every subsequent comprehensive annual financial report during the time in which closure and post-closure care costs are assured through the financial test. A reference to corrective action costs must be placed in the comprehensive annual financial report not later than 120 days after the corrective action remedy has been selected. The reference to the closure and post-closure care costs shall contain:

(i) the nature and source of the closure and post-closure care requirements;

(ii) the reported liability at the balance sheet date;

(iii) the estimated total closure and post-closure care costs remaining to be recognized;

(iv) the percentage of landfill capacity used to date; and

(v) the estimated landfill life in years.

(3) A local government is not eligible to assure closure, post-closure care, or corrective action costs at its solid waste disposal facility through the financial test if it:

(a) is currently in default on any outstanding general obligation bonds, or

(b) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(c) has operated at a deficit equal to 5%, or more, of the total annual revenue in each of the past two fiscal years; or

(d) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant, or appropriate state agency auditing its financial statement. The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems the qualification insufficient to warrant disallowance of use of the test.

(4) The local government owner or operator must submit the following items to the Director for approval and place a copy of these items in the operating record of the facility:

(a) a letter signed by the local government's chief financial officer that:

(i) lists all current cost estimates covered by a financial test; and

(ii) provides evidence and certifies that the local government meets the requirements of Subsections R315-309-8(2) and R315-309-8(6);

(b) the local government's independently audited year-end financial statements for the latest fiscal year including the unqualified opinion of the auditor, who must be an independent certified public accountant;

(c) a report to the local government from the local government's independent certified public accountant stating the procedures performed and the findings relative to:

(i) the requirements of Subsections R315-309-8(2)(c) and R315-309-8(3)(c) and (d); and

(ii) the financial ratios required by Subsection R315-309-8(2)(b), if applicable; and

(d) a copy of the comprehensive annual financial report used to comply with Subsection R315-309-8(2)(d).

(e) The items required by Subsection R315-309-8(4) are to be submitted to the Director and copies placed in the facility's operating record as follows:

(i) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year.

(a) The items required in Subsection R315-309-8(4) shall be submitted as part of the facility's annual report required by Subsection R315-302-2(4).

(b) If the local government no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the local government's fiscal year:

(i) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(ii) submit documentation of the alternative financial assurance to the Director and place copies of the documentation in the facility's operating record.

(c) The Director, based on a reasonable belief that the local government may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Director finds that the local government no longer meets the requirements of the local government financial test, the local government shall be required to provide alternative financial assurance on a schedule established by the Director.

(6) The portion of the closure, post-closure, and corrective action costs for which a local government owner or operator may assume under the local government financial test is determined as follows:

(a) If the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue.

(b) If the local government assures any other environmental obligation through a financial test, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure by local government financial test. The total that may be assured must not exceed 43% of the local government's total annual revenue.

(c) The local government shall obtain an alternate financial assurance mechanism for those costs that exceed 43% of the local government's total annual revenue.

(7) Local Government Guarantee.

(a) An owner or operator of a solid waste facility may demonstrate financial assurance for closure, post-closure, and corrective action by obtaining a written guarantee provided by a local government. The local government providing the guarantee shall meet the requirements of the local government financial test in Section R315-309-8 and shall comply with the terms of the written guarantee as specified in Subsections R315-309-8(7)(b) and (c).

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Section R315-309-4 in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur until 120 days after the date the notice is received by the Director.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Director; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Director for review and approval, and place copies of the documentation in the facility's operating record.

R315-309-9. Corporate Financial Test.

(1) The terms used specifically in Section R315-309-9 are defined as follows.

(a) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(b) "Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(c) "Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(d) "Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with 40 CFR 144.62(a), (b), and (c) (2001) which is adopted and incorporated by reference.

(e) "Independently audited" means an audit performed by and independent certified public accountant in accordance with generally accepted auditing standards.

(f) "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(g) "Net working capital" means current assets minus current liabilities.

(h) "Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

(i) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(2) A corporate owner or operator of a solid waste facility may demonstrate financial assurance up to the current cost estimate as required by Subsection R315-309-2(3) for closure and post-closure care and the cost estimate required by Subsection R315-309-2(5) for corrective action, if required, by meeting the following requirements.

(a) The owner or operator must satisfy one of the following three conditions:

(i) a current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or

(ii) a ratio of less than 1.5 comparing total liabilities to net worth: or

(iii) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

(b) The tangible net worth of the owner or operator must be greater than:

(i) the sum of the current closure, post-closure care, and corrective action cost estimates and any other environmental obligation, including guarantees, covered by a financial test plus $10 million except as provided in Subsection R315-309-9(2)(b)(ii);

(ii) $10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Director.

(c) The owner or operator must have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test.

(3) The owner or operator must place the following items into the facility's operating record and submit a copy of these items to the Director for approval:

(a) a letter signed by the owner's or operator's chief

financial officer that:

(i) lists all current cost estimates for closure, post-closure care, corrective action, and any other environmental obligations covered by a financial test; and

(ii) provides evidence demonstrating that the firm meets the conditions of Subsection R315-309-9(2)(a)(i), or (a)(ii), or (a)(iii) and Subsections R315-309-9(2)(b) and (c); and

(b) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year.

(i) To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant.

(ii) The Director may evaluate qualified opinions on a case-by-case basis and allow use of the financial test where the Director deems the matters which form the basis for the qualification are insufficient to warrant disallowance of the test.

(c) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-309-9(2)(a)(i) or (ii) that are different from data in the audited financial statements or data filed with the Securities and Exchange Commission, then a special report from the owner's or operator's independent certified public accountant is required. The special report shall:

(i) be based upon an agreed upon procedures engagement in accordance with professional auditing standards;

(ii) describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements;

(iii) describe the findings of that comparison; and

(iv) explain the reasons for any differences.

(d) If the chief financial officer's letter provides a demonstration that the firm has assured environmental obligations as provided in Subsection R315-309-9(2)(b)(ii), then the letter shall include a report from the independent certified public accountant that:

(i) verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements;

(ii) explains how these obligations have been measured and reported; and

(iii) certifies that the tangible net worth of the firm is at least $10 million plus the amount of all guarantees provided.

(e) The items required by Subsection R315-309-9(3) are to be submitted to the Director and copies placed in the facility's operating record as follows:

(i) in the case of closure and post-closure care, for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) in the case of closure and post-closure care, for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) in the case of corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(4) A firm must satisfy the requirements of the financial test at the close of each fiscal year by submitting the items required in Subsection R315-309-9(3) as part of the facility's annual report required by Subsection R315-302-2(4).

(5) If the firm no longer meets the requirements of the corporate financial test it shall, within 120 days following the close of the firm's fiscal year:

(a) obtain alternative financial assurance that meets the requirements of R315-309-1(1); and

(b) submit documentation of the alternative financial assurance to the Director and place copies of the documentation in the facility's operating record.

(c) The Director, based on a reasonable belief that the firm may no longer meet the requirements of the corporate financial test, may require additional reports of financial condition from the firm at any time. If the Director finds that the firm no longer meets the requirements of the corporate financial test, firm shall be required to provide alternative financial assurance on a schedule established by the Director.

(6) Corporate Guarantee.

(a) A corporate owner or operator of a solid waste facility may demonstrate financial assurance for closure, post-closure care, and corrective action by obtaining a written guarantee provided by a corporation.

(i) The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator.

(ii) The firm shall meet the requirements of the corporate financial test in Section R315-309-9 and shall comply with the terms of the written guarantee as specified in Subsections R315-309-3(6)(b) and (c).

(A) A certified copy of the guarantee along with copies of the letter from the guarantor's chief financial officer and accountant's opinions must be submitted to the Director and placed in the facility's operating record.

(B) If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the guarantor's chief financial officer must describe the value received in consideration of the guarantee.

(C) If the guarantor is a firm with a substantial business relationship with the owner or operator, the letter from the chief financial officer must describe this substantial business relationship and the value received in consideration of the guarantee.

(b) The guarantee must be effective for closure and post-closure care:

(i) for a new facility or a lateral expansion of an existing facility, before the initial receipt of waste;

(ii) for an existing facility, in accordance with the effective dates specified in Subsection R315-309-1(3)(a); and

(iii) for corrective action, in accordance with the schedule specified in Subsection R315-309-1(3)(b).

(c) The guarantee shall provide that if the owner or operator fails to perform closure, post-closure care, or corrective action of a facility covered by the guarantee, the guarantor will:

(i) perform, or pay a third party to perform, closure, post-closure, or corrective action as required; or

(ii) establish a fully funded trust fund as specified in Section R315-309-4 in the name of the owner or operator.

(d) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur until 120 days after the date the notice is received by the Director.

(e) If the guarantee is canceled, the owner or operator shall, within 90 days following the receipt of the cancellation notice:

(i) obtain alternate financial assurance that meets the requirements of Subsection R315-309-1(1);

(ii) submit documentation of the alternate financial assurance to the Director; and

(iii) place copies of the documentation of the alternate financial assurance in the facility's operating record.

(iv) If the owner or operator fails to provide alternate financial assurance within the 90 day period, the guarantor must provide the alternate financial assurance within 120 days following the guarantor's notice of cancellation, submit documentation of the alternate financial assurance to the Director for review and approval, and place copies of the documentation in the facility's operating record.

(f) If a corporate guarantor no longer meets the requirements of the corporate financial test as specified in

Section R315-309-9:

(i) the owner or operator must, within 90 days, obtain alternate financial assurance; and

(ii) submit documentation of the alternate financial assurance to the Director and place copies of this documentation in the facility's operating record.

(iii) If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

R315-309-10. Discounting.

(1) The Director may allow discounting of closure, post-closure care, or corrective action costs up to the rate of return for essentially risk free investments, net inflation.

(2) Discounting may be allowed under the following conditions:

(a) the Director determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer registered in the state of Utah so stating;

(b) the Director finds the facility in compliance with all applicable Utah Solid Waste Permitting and Management Rules and in compliance with all conditions of the facility's permit issued under the rules;

(c) the Director determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of the facility life; and

(d) discounted cost estimates must be adjusted annually to reflect inflation and years of remaining facility life.

R315-309-11. Termination of Financial Assurance.

The owner or operator of a solid waste facility may terminate or cancel an active financial assurance mechanism under the following conditions:

(1) if the owner or operator establishes alternate financial assurance as approved by the Director; or

(2) if the owner or operator is released from the financial assurance requirements by the Director after meeting the conditions and requirements of Subsections R315-302-3(7)(b) and (c) or Subsection R315-308-3(2)(c), whichever is applicable.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-310. Permit Requirements for Solid Waste Facilities.
R315-310-1. Applicability.

(1) The following solid waste facilities require a permit:

(a) New and existing Class I, II, III, IV, V, and VI Landfills;

(b) Class I, II, III, IV, V, and VI Landfills that have closed but have not met the requirements of Subsection R315-302-3(7);

(c) incinerator facilities that are regulated by Rule R315-306;

(d) land treatment disposal facilities that are regulated by Rule R315-307; and

(d) waste tire storage facilities.

(2) Permits are not required for corrective actions at solid waste facilities performed by the state or in conjunction with the United States Environmental Protection Agency or in conjunction with actions to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), or corrective actions taken by others to comply with a state or federal cleanup order.

(3) The requirements of Rule R315-310 apply to each existing and new solid waste facility, for which a permit is required.

(a) The Director may incorporate a compliance schedule for each existing facility to ensure that the owner or operator, or both, of each existing facility meet the requirements of Rule R315-310.

(b) The owner or operator, or both, where the owner and operator are not the same person, of each new facility or expansion at an existing solid waste facility, for which a permit is required, shall:

(i) apply for a permit according to the requirements of Rule R315-310;

(ii) not begin the construction or the expansion of the solid waste facility until a permit has been granted; and

(iii) not accept waste at the solid waste facility prior to receiving the approval required by Subsection R315-301-5(1).

(4) A landfill may not change from its current class, or subclass, to any other class, or subclass, of landfill except by meeting all requirements for the desired class, or subclass, to include obtaining a new permit from the Director for the desired class, or subclass, of landfill.

R315-310-2. Procedures for Permits.

(1) Prospective applicants may request the Director to schedule a pre-application conference to discuss the proposed solid waste facility and application contents before the application is filed.

(2) Any owner or operator who intends to operate a facility subject to the permit requirements must apply for a permit with the Director. Two copies of the application, signed by the owner or operator and received by the Director are required before permit review can begin.

(3) Applications for a permit must be completed in the format prescribed by the Director.

(4) An application for a permit, all reports required by a permit, and other information requested by the Director shall be signed as follows:

(a) for a corporation: by a principal executive officer of at least the level of vice-president;

(b) for a partnership or sole proprietorship: by a general partner or the proprietor;

(c) for a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or

(d) by a duly authorized representative of the person above, as appropriate.

(i) A person is a duly authorized representative only if the authorization is made in writing, to the Director, by a person described in Subsections R315-310-2(4)(a), (b), or (c), as appropriate.

(ii) The authorization may specify either a named individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of facility manager, director, superintendent, or other position of equivalent responsibility.

(iii) If an authorization is no longer accurate and needs to be changed because a different individual or position has responsibility for the overall operation of the facility, a new authorization that meets the requirements of Subsections R315-310-2(4)(d)(i) and (ii) shall be submitted to the Director prior to or together with any report, information, or application to be signed by the authorized representative.

(5) Filing Fee and Permit Review Fee.

(a) A filing fee, as required by the Annual Appropriations Act, shall accompany the filing of an application for a permit. The review of the application will not begin until the filing fee is received.

(b) A review fee, as established by the Annual Appropriations Act, shall be charged at an hourly rate for the review of an application. The review fee shall be billed quarterly and shall be due and payable quarterly.

(6) All contents and materials submitted as a permit application shall become part of the approved permit and shall be part of the operating record of the solid waste disposal facility.

(7) The owner or operator, or both, of a facility shall apply for renewal of the facility's permit every ten years.

R315-310-3. General Contents of a Permit Application for a New Facility or a Facility Seeking Expansion.

(1) Each permit application for a new facility or a facility seeking expansion shall contain the following:

(a) the name and address of the applicant, property owner, and responsible party for the site operation;

(b) a general description of the facility accompanied by facility plans and drawings and, except for Class IIIb, IVb, and Class VI Landfills and waste tire storage facilities, unless required by the Director, the facility plans and drawings shall be signed and sealed by a professional engineer registered in the State of Utah;

(c) a legal description and proof of ownership, lease agreement, or other mechanism approved by the Director of the proposed site, latitude and longitude map coordinates of the facility's front gate, and maps of the proposed facility site including land use and zoning of the surrounding area;

(d) the types of waste to be handled at the facility and area served by the facility;

(e) the plan of operation required by Subsection R315-302-2(2);

(f) the form used to record weights or volumes of wastes received required by Subsection R315-302-2(3)(a)(i);

(g) an inspection schedule and inspection log required by Subsection R315-302-2(5)(a);

(h) the closure and post-closure plans required by Section R315-302-3;

(i) documentation to show that any waste water treatment facility, such as a run-off or a leachate treatment system, is being reviewed or has been reviewed by the Division of Water Quality;

(j) a proposed financial assurance plan that meets the requirements of Rule R315-309; and

(k) A historical and archeological identification efforts, which may include an archaeological survey conducted by a person holding a valid license to conduct surveys issued under R694-1.

(2) Public Participation Requirements.

(a) Each permit application shall provide:

(i) the name and address of all owners of property within 1,000 feet of the proposed solid waste facility; and

(ii) documentation that a notice of intent to apply for a permit for a solid waste facility has been sent to all property owners identified in Subsection R315-310-3(3)(a)(i).

(iii) the Director with the name of the local government with jurisdiction over the site and the mailing address of that local government office.

(b) The Director shall send a letter to each person identified in Subsection R315-310-3(3)(a)(i) and (iii) requesting that they reply, in writing, if they desire their name to be placed on an interested party list to receive further public information concerning the proposed facility.

(3) Special Requirements for a Commercial Solid Waste Disposal Facility.

(a) The permit application for a commercial nonhazardous solid waste disposal facility shall contain the information required by Subsections 19-6-108(9) and (10).

(b) Subsequent to the issuance of a solid waste permit by the Director, a commercial nonhazardous solid waste disposal facility shall meet the requirements of Subsection 19-6-108(3)(c) and provide documentation to the Director that the solid waste disposal facility is approved by the local government, the Legislature, and the governor.

(c) Construction of the solid waste disposal facility may not begin until the requirements of Subsections R315-310-3(2)(b) are met and approval to begin construction has been granted by the Director.

(d) Commercial solid waste disposal facilities solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government are not subject to Subsections R315-310-3(2)(a), (b), and (c).

R315-310-4. Contents of a Permit Application for a New or Expanded Class I, II, III, IV, V, and VI Landfill Facility as Specified.

(1) Each application for a new or expanded landfill shall contain the information required by Section R315-310-3.

(2) Each application shall also contain:

(a) the following maps shall be included in a permit application for a Class I, II, III, IV, V, and VI Landfill:

(i) topographic map of the landfill unit drawn to a scale of 200 feet to the inch containing five foot contour intervals where the relief exceeds 20 feet and two foot contour intervals where the relief is less than 20 feet, showing the boundaries of the landfill unit, ground water monitoring wells, landfill gas monitoring points, and borrow and fill areas; and

(ii) the most recent full size U.S. Geological Survey topographic map, 7-1/2 minute series, if printed, or other recent topographic survey of equivalent detail of the area, showing the waste facility boundary, the property boundary, surface drainage channels, existing utilities, and structures within one-fourth mile of the facility site, and the direction of the prevailing winds.

(b) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain a geohydrological assessment of the facility that addresses:

(i) local and regional geology and hydrology, including faults, unstable slopes and subsidence areas on site;

(ii) evaluation of bedrock and soil types and properties, including permeability rates;

(iii) depths to ground water or aquifers;

(iv) direction and flow rate of ground water;

(v) quantity, location, and construction of any private and public wells on the site and within 2,000 feet of the facility boundary;

(vi) tabulation of all water rights for ground water and surface water on the site and within 2,000 feet of the facility boundary;

(vii) identification and description of all surface waters on the site and within one mile of the facility boundary;

(viii) background ground and surface water quality assessment and identification of impacts of the existing facility upon ground and surface waters from landfill leachate discharges;

(ix) calculation of a site water balance; and

(x) conceptual design of a ground water and surface water monitoring system, including proposed installation methods for these devices and where applicable, a vadose zone monitoring plan;

(c) a permit application for a Class I, II, IIIa, IVa, and V Landfill shall contain an engineering report, plans, specifications, and calculations that address:

(i) how the facility will meet the location standards pursuant to Section R315-302-1 including documentation of any demonstration made with respect to any location standard;

(ii) the basis for calculating the facility's life;

(iii) cell design to include liner design, cover design, fill methods, elevation of final cover and bottom liner, and equipment requirements and availability;

(iv) identification of borrow sources for daily and final cover, and for soil liners;

(v) interim and final leachate collection, treatment, and disposal;

(vi) ground water monitoring plan that meets the requirements of Rule R315-308;

(vii) landfill gas monitoring and control that meets the requirements of Subsection R315-303-3(5);

(viii) design and location of run-on and run-off control systems;

(ix) closure and post-closure design, construction, maintenance, and land use; and

(x) quality control and quality assurance for the construction of any engineered structure or feature, excluding buildings at landfills, at the solid waste disposal facility and for any applicable activity such as ground water monitoring.

(d) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a closure plan to address:

(i) closure schedule;

(ii) capacity of the solid waste disposal facility in volume and tonnage;

(iii) final inspection by regulatory agencies; and

(iv) identification of closure costs including cost calculations and the funding mechanism.

(e) a permit application for a Class I, II, III, IV, V, and VI Landfill shall contain a post-closure plan to address, as appropriate for the specific landfill:

(i) site monitoring of:

(A) landfill gas on a quarterly basis until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met;

(B) ground water on a semiannual basis, or other schedule as determined by the Director, until the conditions of either Subsection R315-302-3(7)(b) or Subsection R315-302-3(7)(c) are met; and

(C) surface water, if required, on the schedule specified by the Director and until the Director determines that the monitoring of surface water may be discontinued;

(ii) inspections of the landfill by the owner or operator:

(A) for landfills that are required to monitor landfill gas, and Class II Landfills, on a quarterly basis; and

(B) for other landfills that are not required to monitor landfill gas, on a semiannual basis;

(iii) maintenance activities to maintain cover and run-on and run-off systems;

(iv) identification of post-closure costs including cost calculations and the funding mechanism;

(v) changes to record of title as specified by Subsection

R315-302-2(6); and

(vi) list the name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

R315-310-5. Contents of a Permit Application for a New or Expanding Class III, IV, or VI Landfill.

(1) Each application for a permit for a new Class III, IV, or VI landfill or for a permit to expand an existing Class III, IV, or VI Landfill shall contain the information required in Section R315-310-3.

(2) Each application shall also contain an engineering report, plans, specifications, and calculations that address:

(a) the information and maps required by Subsections R315-310-4(2)(a)(i) and (ii);

(b) the design and location of the run-on and run-off control systems;

(c) the information required by Subsections R315-310-4(2)(d) and (e);

(d) the area to be served by the facility; and

(e) how the facility will meet the requirements of Rule R315-304, for a Class III Landfill, or Rule R315-305, for a Class IV or VI Landfill.

(3) Each application for a Class IIIa or Class IVa Landfill permit shall also contain the applicable information required in Subsections R315-310-4(2)(b)and (c).

R315-310-6. Contents of a Permit Application for a New or Expanding Landtreatment Disposal Facility.

(1) Each application for a landtreatment disposal facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) a geohydrological assessment of the facility site that addresses all of the factors of Subsection R315-310-4(2)(b);

(b) engineering report, plans, specifications, and calculations that address:

(i) how the proposed facility will meet the location standards pursuant to Section R315-302-1;

(ii) how the proposed facility will meet the standards of Rule R315-307;

(iii) the basis for calculating the facility's life;

(iv) waste analyses and methods to periodically sample and analyze solid waste;

(v) design of interim waste storage facilities;

(vi) design of run-on and run-off control systems;

(vii) a contour map of the active area showing contours to the nearest foot;

(viii) a ground water and surface water monitoring program; and

(ix) access barriers such as fences, gate, and warning signs.

(c) a plan of operation that in addition to the requirements of Section R315-302-2 addresses:

(i) operation and maintenance of run-on and run-off control systems;

(ii) methods of taking ground water samples and for maintaining ground water monitoring systems; and

(iii) methods of applying wastes to meet the requirements of Section R315-307-3.

(d) closure plan to address:

(i) closure schedule;

(ii) capacity of site in volume and tonnage; and

(iii) final inspection by regulatory agencies.

(e) post-closure plan to address:

(i) estimated time period for post-closure activities;

(ii) site monitoring of ground water;

(iii) changes in record of title;

(iv) maintenance activities to maintain cover and run-off system;

(v) plans for food-chain crops, if any, being grown on the active areas, after closure; and

(vi) identification of final closure costs including cost calculations and the funding mechanism.

R315-310-7. Contents of a Permit Application for a New or Expanding Incinerator Facility.

(1) Each application for a new or expanding incinerator facility permit shall contain the information required in Section R315-310-3.

(2) Each application for a permit shall also contain:

(a) engineering report, plans, specifications, and calculations that address:

(i) the design of the storage and handling facilities on-site for incoming waste as well as fly ash, bottom ash, and any other wastes produced by air or water pollution controls; and

(ii) the design of the incinerator or thermal treater, including charging or feeding systems, combustion air systems, combustion or reaction chambers, including heat recovery systems, ash handling systems, and air pollution and water pollution control systems. Instrumentation and monitoring systems design shall also be included.

(b) an operational plan that, in addition to the requirements of Section R315-302-2, addresses:

(i) cleaning of storage areas as required by Subsection R315-306-2(5);

(ii) alternative storage plans for breakdowns as required in Subsection R315-306-2(3);

(iii) inspections to insure compliance with state and local air pollution laws and to comply with Subsection R315-302-2(5)(a). The inspection log or summary must be submitted with the application;

(iv) how and where the fly ash, bottom ash, and other solid waste will be disposed; and

(v) a program for excluding the receipt of hazardous waste equivalent to requirements specified in Subsection R315-303-4(7).

(c) documentation to show that air pollution and water pollution control systems are being reviewed or have been reviewed by the Division of Air Quality and the Division of Water Quality.

(d) a closure plan to address:

(i) closure schedule;

(ii) closure costs and a financial assurance mechanism to cover the closure costs;

(iii) methods of closure and methods of removing wastes, equipment, and location of final disposal; and

(iv) final inspection by regulator agencies.

R315-310-8. Contents of a Permit Application for a New or Expanding Waste Tire Storage Facility.

Each application for a waste tire storage facility permit shall contain the information required in Subsections R315-310-3(1)(a), (b), (c), (f), (g), (h), (k), R315-310-3(2) and Subsection R315-314-3(3).

R315-310-9. Contents of an Application for a Permit Renewal.

The owner or operator, or both, where the owner and operator are not the same person, of each existing facility who intend to have the facility continue to operate, shall apply for a renewal of the permit by submitting the applicable information and application specified in Sections R315-310-3, -4, -5, -6, -7, or -8, as appropriate. Applicable information, that was submitted to the Director as part of a previous permit application, may be copied and included in the permit renewal application so that all required information is contained in one document. The information submitted shall reflect the current operation, monitoring, closure, post-closure, and all other

aspects of the facility as currently established at the time of the renewal application submittle.

R315-310-10. Contents of an Application for a Permit for a Facility in Post-Closure Care.

The application for a Post-Closure Care permit shall contain the applicable information required in Section R315-310-3 and documentation as to how the facility will meet the requirements of Section R315-302-3(5) and (6).

R315-310-11. Permit Transfer.

(1) A permit may not be transferred without approval from the Director, nor shall a permit be transferred from one property to another.

(2) The new owner or operator shall submit to the Director:

(a) A revised permit application no later than 60 days prior to the scheduled change and

(b) A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees.

(3) The new permittee shall:

(a) assume permit requirements and all financial responsibility;

(b) provide adequate documentation that the permittee has or shall have ownership or control of the facility for which the transfer of permit has been requested;

(c) demonstrate adequate knowledge and ability to operate the facility in accordance with the permit conditions; and

(d) demonstrate adequate financial assurance as required in the permit and R315-309 for the operation of the facility.

(4) When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Rule R315-309 until the new owner or operator has demonstrated that it is complying with the requirements of that rule.

(5) An application for permit transfer may be denied if the Director finds that the applicant has:

(a) knowingly misrepresented a material fact in the application;

(b) refused or failed to disclose any information requested by the Director;

(c) exhibited a history of willful disregard of any state or federal environmental law; or

(d) had any permit revoked or permanently suspended for cause under any state or federal environmental law.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-311. Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities.
R315-311-1. General Requirements.

(1) Upon submittal of the complete information required by Rule R315-310, as determined by the Director, a draft permit or permit denial will be prepared and the owner or operator of the new or existing facility will be notified in writing by the Director.

(a) After meeting the requirements of the public comment period and public hearing as stipulated in Section R315-311-3, the owner or operator may be issued a permit which will include appropriate conditions and limitations on operation and types of waste to be accepted at the facility.

(b) Construction shall not begin prior to the receipt of the permit.

(c) An application that has been initiated by an owner or operator but for which the Director has not received a response to questions about the application for more than one year shall be canceled.

(2) Solid waste disposal facility plan approval and permit issuance will depend upon:

(a) the adequacy of the facility in meeting the location standards in Section R315-302-1;

(b) the hydrology and geology of the area; and

(c) the adequacy of the plan of operation, facility design, and monitoring programs in meeting the requirements of the applicable rules.

(3) A permit can be granted for up to ten years by the Director, except as allowed in Subsection R315-311-1(5).

(4) The owner or operator, or both, when the owner and the operator are not the same person, of each solid waste facility shall:

(a) apply for a permit renewal, as required by Section R315-310-10, 180 days prior to the expiration date of the current permit if the permit holder intends to continue operations after the current permit expires; and

(b) for facilities for which financial assurance is required by R315-309-1, submit, for review and approval by the Director on a schedule of no less than every five years, a complete update of the financial assurance required in Rule R315-309 which shall contain:

(i) a calculation of the current costs of closure as required by Subsection R315-309-2(3); and

(ii) a calculation that is not based on a closure cost which has been obtained by applying an inflation factor to past cost estimates.

(5) A permit for a facility in post-closure care:

(i) may be issued for the life of the post-closure care period; and

(ii) the holder of the post-closure care permit shall comply with Subsection R315-311-1(4)(b).

R315-311-2. Permit Modification, Renewal, or Termination.

(1) A permit may be considered for modification, renewal, or termination at the request of any interested person, including the permittee, or upon the Director's initiative as a result of new information or changes in statutes or rules. Requests for modification, reissuance, or termination shall be submitted in writing to the Director and shall contain facts or reasons supporting the request. Requests for permit modification, renewal, or termination shall become effective only upon approval by the Director.

(a) Minor modifications of a permit or plan of operation shall not be subject to the 30 day public comment period as required by Section R315-311-3. A permit modification shall be considered minor if:

(i) typographical errors are corrected;

(ii) the name, address, or phone number of persons or agencies identified in the permit are changed;

(iii) administrative or informational changes are made;

(iv) procedures for maintaining the operating record are changed or the location where the operating record is kept is changed;

(v) changes are made to provide for more frequent monitoring, reporting, sampling, or maintenance;

(vi) a compliance date extension request is made for a new date not to exceed 120 days after the date specified in the approved permit;

(vii) changes are made in the expiration date of the permit to allow an earlier permit termination;

(viii) changes are made in the closure schedule for a unit, in the final closure schedule for the facility, or the closure period is extended;

(ix) the Director determines, in the case of a permit transfer application, that no change in the permit other than the change in the name of the owner or operator is necessary;

(x) equipment is upgraded or replaced with functionally equivalent components;

(xi) changes are made in sampling or analysis methods, procedures, or schedules;

(xii) changes are made in the construction or ground water monitoring quality control/quality assurance plans which will better certify that the specifications for construction, closure, sampling, or analysis will be met;

(xiii) changes are made in the facility plan of operation which conform to guidance or rules approved by the Board or provide more efficient waste handling or more effective waste screening;

(xiv) an existing monitoring well is replaced with a new well without changing the location;

(xv) changes are made in the design or depth of a monitoring well that provides more effective monitoring;

(xvi) changes are made in the statistical method used to statistically analyze the ground water quality data; or

(xvii) Changes are made in any permit condition that are more restrictive or provide more protection to health or the environment.

(b) The Director may subject any minor modification request to the 30-day public comment period if justified by conditions and circumstances.

(c) A permit modification that does not meet the requirements of Subsection R315-311-2(1)(a) for a minor modification shall be a major modification.

(d) If the Director determines that major modifications to a permit or plan of operation are justified, a new operational plan incorporating the approved modifications shall be prepared. The modifications shall be subject to the public comment period as specified in Section R315-311-3.

(2) An application for permit renewal shall consist of the information required by Section R315-310-9. Upon receipt of the application, the Director will review the application and will notify the applicant as to what information or change of operational practice is required of the applicant, if any, to receive a permit renewal. The current permit shall remain in effect until issuance or denial of a new permit. Each permit renewal shall be subject to the public comment requirements of Section R315-311-3.

(3) The Director shall notify, in writing, the owner or operator of any facility of intent to terminate a permit. A permit may be terminated for:

(a) noncompliance with any condition of the permit;

(b) noncompliance with any applicable rule;

(c) failure in the application or during the approval or renewal process to disclose fully all relevant facts;

(d) misrepresentation by the owner or operator of any relevant facts at any time; or

(e) a determination that the solid waste activity or facility endangers human health or the environment.

(4) The owner or operator of a facility may appeal any action

associated with modification, renewal, or termination in accordance with Section R315-317-3, Title 63G Chapter 4, and Rule R315-12.

R315-311-3. Public Comment Period.

(1) The draft permit, permit renewal, or major modification of a permit, for each solid waste facility that requires a permit, shall be subject to a 30-day public comment period.

(2) A public hearing may be held if a request for public hearing is submitted to the Director in writing:

(a) by a local government, a state agency, ten interested persons, or an interested association having not fewer than ten members; and

(b) the request is received by the Director not more than 15 days after the publication of the public notice.

(3) After due consideration of all comments received, final determination on draft permits or major modification of permits will be made available by public notice.

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R315. Environmental Quality, Solid and Hazardous Waste.
R315-312. Recycling and Composting Facility Standards.
R315-312-1. Applicability.

(1) The standards of Rule R315-312 apply to any facility engaged in recycling or utilization of solid waste on the land including:

(a) composting;

(b) utilization of organic sludge, other than domestic sewage sludge and septage, and untreated woodwaste on land for beneficial use; and

(c) accumulation of wastes in piles for recycling or utilization.

(2) These standards do not apply to:

(a) animal feeding operations, including dairies, that compost exclusively manure and vegetative material and meet the composting standards of a Comprehensive Nutrient Management Plan;

(b) other composting operations in which waste from on-site is composted and the finished compost is used on-site; or

(c) hazardous waste.

(3) These standards do not apply to any facility that recycles or utilizes solid wastes solely in containers, tanks, vessels, or in any enclosed building, including buy-back recycling centers.

(4) The composting of domestic sewage sludge, on the site of its generation, is exempt from the requirements of Rule R315-312 but is regulated under the applicable requirements of Rule R317-8 and 40 CFR 503 by the Utah Division of Water Quality.

R315-312-2. Recycling and Composting Requirements.

(1) Any recycling or composting facility shall meet the requirements of Section R315-302-2, and shall submit a general plan of operation and such other information as requested by the Director prior to the commencement of any recycling operation.

(2) Each applicable recycling or composting facility shall submit a certification that the facility has, during the past year, operated according to the submitted plan of operation to the Director by March 1 of each year.

(3) Any facility storing materials in outdoor piles for the purpose of recycling shall be considered to be disposing of solid waste if:

(a) at least 50% of the material on hand at the beginning of a year at the facility has not been shown to have been recycled by the end of that year and any material has been on-site more than two years unless a longer period is approved by the Director; or

(b) ground water or surface water, air, or land contamination has occurred or is likely to occur under current conditions of storage.

(c) Upon a determination by the Director or his authorized representative that the limits of Subsection R315-312-2(3)(a) or (b) have been exceeded, the Director may require a permit application and issuance of a permit as a solid waste disposal facility.

(4) Any recycling or composting facility may be required to provide financial assurance for clean-up and closure of the site as determined by the Director.

(5) Tires stored in piles for the purpose of recycling at a tire recycling facility shall be subject to the requirements of Section R315-314-3.

R315-312-3. Composting Requirements.

(1) No new composting facility shall be located in the following areas:

(a) wetlands, watercourses, or floodplains; or

(b) within 500 feet of any permanent residence, school, hospital, institution, office building, restaurant, or church.

(2) Each new compost facility shall meet the requirements of Subsection R315-302-1(2)(f)

(3) Each owner or operator of a composting facility, in addition to the operational plan required in Subsection R315-312-2(1), shall develop, keep on file, and abide by a plan that addresses:

(a) detailed plans and specifications for the entire composting facility including manufacturer's performance data for equipment;

(b) methods of measuring, grinding or shredding, mixing, and proportioning input materials;

(c) a description and location of temperature and other types of monitoring equipment and the frequency of monitoring;

(d) a description of any additive material, including its origin, quantity, quality, and frequency of use;

(e) special precautions or procedures for operation during wind, heavy rain, snow, and freezing conditions;

(f) estimated composting time duration, which is the time period from initiation of the composting process to completion;

(g) for windrow systems, the windrow construction, including width, length, and height;

(h) the method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity; and

(i) a description of the ultimate use for the finished compost, the method for removal from the site, and a plan for the disposal of the finished compost that can not be used in the expected manner due to poor quality or change in market conditions.

(4) Composting Facility Operation Requirements.

(a) Operational records must be maintained during the life of the facility and during the post-closure care period, which include, at a minimum, temperature data and quantity and types of material processed.

(b) All waste materials collected for the purpose of processing must be processed within two years or as provided in the plan of operation.

(c) All materials not destined for processing must be properly disposed.

(d) Turning frequency of the compost must be sufficient to maintain aerobic conditions and to produce a compost product in the desired time frame.

(e) During the composting process, the compost must:

(i) maintain a temperature between 104 and 149 degrees Fahrenheit (40 and 65 degrees Celsius) for a period of not less than five days; and

(ii) reach a temperature of not less than 131 degrees F (55 degrees C) for a consecutive period of not less than four hours during the five day period.

(f) The following wastes may not be accepted for composting:

(i) asbestos waste;

(ii) Hazardous waste;

(iii) waste containing PCBs; or

(iv) treated wood.

(g) Any composting facility utilizing municipal solid waste, municipal sewage treatment sludge, water treatment sludge, or septage shall require the generator to characterize the material and certify that any material used is nonhazardous, contains no PCB's, and contains no treated wood.

(h) If the composting operation will be utilizing domestic sewage sludge, septage, or municipal solid waste:

(i) compost piles or windrows shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile or windrow, to prevent contamination of subsurface soil, ground water, or both and to allow collection of run-off and leachate. The liner shall be of sufficient thickness and strength to withstand stresses imposed by compost handling vehicles and the compost itself;

(ii) run-off systems shall be designed, installed and maintained to control and collect the run-off from a 25-year storm event;

(iii) the collected leachate shall be treated in a manner approved by the Director; and

(iv) run-on prevention systems shall be designed, constructed, and maintained to divert the maximum flow from a 25-year storm event.

(i) If the Director determines that a composting operation, which composts materials other than domestic sewage sludge, septage, or municipal solid waste, is likely to produce a leachate that in combination with the hydrologic, geologic, and climatic factors of the site will present a threat to human health or the environment, the Director may require the owner or operator of the composting facility to meet the requirements specified in Subsection R315-312-3(4)(h).

(j) The finished compost must contain no sharp inorganic objects and must be sufficiently stable that it can be stored or applied to land without creating a nuisance, environmental threat, or a hazard to health.

(5) Composting Facility Closure and Post-closure Requirements.

(a) Within 30 days of closure, a composting facility shall:

(i) remove all piles, windrows, and any other compost material on the composting facility's property;

(ii) remove or revegetate compacted compost material that may be left on the land;

(iii) drain ponds or leachate collection system if any, back-fill, and assure removed contents are properly disposed;

(iv) cover if necessary; and

(v) record with the county recorder as part of the record of title, a plat and statement of fact that the property has been used as a composting facility.

(b) The post-closure care and monitoring shall be for five years and shall consist of:

(i) the maintenance of any monitoring equipment and sampling and testing schedules as required by the Director; and

(ii) inspection and maintenance of any cover material.

R315-312-4. Requirements for Use on Land of Sewage Sludge, Woodwaste, and Other Organic Sludge.

(1) Any facility using domestic sewage sludge or septage on land is exempt from the requirements of Section R315-312-4 when the facility has a permit or other approval under the applicable requirements of Rule R317-8 and 40 CFR 503 issued by the Utah Division of Water Quality.

(2) Any facility using organic sludge, other than domestic sewage sludge or septage, or untreated woodwaste on land shall comply with the recycling standards of Section R315-312-2.

(3) Only agricultural or silvicultural sites where organic sludge or untreated woodwaste is demonstrated to have soil conditioning or fertilizer value shall be acceptable for use under this subsection, provided that the sludge or woodwaste is applied as a soil conditioner or fertilizer in accordance with accepted agricultural and silvicultural practice.

(4) A facility using organic sludge or untreated woodwaste on the land in a manner not consistent with the requirements of Section R315-312-4 must meet the standards of Rule R315-307.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105
Notice of Continuation February 13, 2013 19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-313. Transfer Stations and Drop Box Facilities.
R315-313-1. Applicability.

Any transfer station or drop box facility receiving solid waste from off-site shall meet the requirements of Rule R315-313.

R315-313-2. Transfer Station Standards.

(1) Each transfer station shall meet the requirements of Subsection R315-302-1(2)(f).

(2) Each transfer station shall meet the requirements of Section R315-302-2 and shall submit a plan of operation and such other information as requested by the Director for approval prior to construction and operation.

(3) Each transfer station shall submit, to the Director, by March 1 of each year, a report that meets the applicable requirements of Subsection R315-302-2(4) and a certification that the facility has, during the past year, operated according to the submitted plan of operation.

(4) Each transfer station shall be designed, constructed, and operated to:

(a) be surrounded by a fence, trees, shrubbery, or natural features so as to control access and to screen the station from the view of immediately adjacent neighbors, unless the tipping floor is fully enclosed by a building;

(b) be sturdy and constructed of easily cleanable materials;

(c) be free of potential rat harborage, and provide effective means to control rodents, insects, birds, and other vermin;

(d) be adequately screened to prevent blowing of litter and to provide effective means to control litter;

(e) provide protection of the tipping floor from wind, rain, or snow;

(f) have an adequate buffer zone around the active area to minimize noise and dust nuisances, and a buffer zone of 50 feet from the active area to the nearest property line in areas zoned residential;

(g) provide pollution control measures to protect surface and ground waters by the construction of:

(i) a run-off collection and treatment system, if required, must be designed and operated to collect and treat a 25-year storm and equipment cleaning and washdown water; and

(ii) a run-on prevention system to divert a 25-year storm event;

(h) provide all-weather access in all vehicular areas;

(i) provide pollution control measures to protect air quality including a prohibition against all burning and the development of odor and dust control plans to be made part of the plan of operation;

(j) prohibit scavenging;

(k) provide attendants on-site during hours of operation;

(l) have a sign that identifies the facility and shows at least the name of the site, hours during which the site is open for public use, materials not accepted at the facility, and other necessary information posted at the site entrance;

(m) prevent the acceptance of prohibited waste by meeting the requirements of Subsection R315-303-4(7);

(n) have communication capabilities, if available in the facility area, to immediately summon fire, police, or emergency service personnel in the event of an emergency; and

(o) remove all wastes at final closure from the facility to another permitted facility.

R315-313-3. Drop Box Facility Standards.

(1) Each drop box facility shall be constructed of durable watertight materials with a lid or screen on top that prevents both the loss of materials during transport and access by rats and other vermin.

(2) Each drop box facility shall be located in an easily identifiable place accessible by all-weather roads.

(3) Each drop box facility shall be designed and serviced as often as necessary to ensure adequate storage capacity at all times. Storage of solid waste outside the drop boxes is prohibited.

(4) Each drop box facility shall have a sign at the entrance that complies with Subsection R315-313-2(2)(l).

(5) The owner or operator of each drop box facility shall remove all remaining wastes at final closure, to a permitted facility and remove the drop box.

KEY: solid waste management

April 25, 2013	**19-6-104**
Notice of Continuation February 13, 2013	**19-6-105**
	19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-314. Facility Standards for Piles Used for Storage and Treatment.
R315-314-1. Applicability.

(1) The requirements of Rule R315-314 apply to the following:

(a) a pile of solid waste containing garbage that has been in place for more than seven days;

(b) a pile of solid waste which does not contain garbage that has been in place for more than 90 days;

(c) a pile of material derived from waste tires where more than 1,000 passenger tire equivalents are stored at one site; and

(d) a pile of whole waste tires where more than 1,000 tires are stored at one site.

(2) The requirements of Rule R315-314 do not apply to the following:

(a) solid waste stored or treated in piles prior to recycling including compost piles and wood waste;

(b) solid waste stored in fully enclosed buildings, provided that no liquids or sludge containing free liquids are added to the waste;

(c) a pile of inert waste, as defined by Subsection R315-301-2(36); and

(d) a pile of whole waste tires located at a permitted waste disposal facility that is stored for not longer than one year.

(3) A site where crumb rubber, an ultimate product derived from waste tires, or waste tires that have been reduced to materials for beneficial use are stored for not longer than one year may receive a waiver of the requirements of Rule R315-314 from the Director on a site specific basis.

(a) No waiver of the requirements of Rule R315-314 will be granted by the Director without application from the owner or operator of the storage site.

(b) In granting a waiver of the requirements of Rule R315-314, the Director may place conditions on the owner or operator of the storage site as to the sizes of piles, distance between piles, or other operational practices that will minimize fire danger or a risk to human health or the environment.

(c) The Director may revoke a waiver of the Requirements of Rule R315-314 if the Director finds that:

(i) any condition of the waiver is not met; or

(ii) the operation of the storage site presents a fire danger or a threat to human health or the environment.

R315-314-2. General Requirements.

(1) Each owner and operator shall:

(a) comply with the applicable requirements of Section R315-302-2; and

(b) remove all solid waste from the pile at closure to another permitted facility.

(2) Requirements for Solid Waste Likely to Produce Leachate.

(a) Waste piles shall be placed upon a surface such as sealed concrete, asphalt, clay, or an artificial liner underlying the pile to prevent subsurface soil and potential ground water contamination and to allow collection of run-off and leachate. The liner shall be designed of sufficient thickness and strength to withstand stresses imposed by pile handling vehicles and the pile itself.

(b) A run-off collection and treatment system shall be designed, installed and maintained to collect and treat a 25-year storm event.

(c) Waste piles having a capacity of greater than 10,000 cubic yards shall have either:

(i) a ground water monitoring system that complies with Rule R315-308; or

(ii) a leachate detection, collection and treatment system.

(iii) For purposes of this subsection, capacity refers to the total capacity of all leachate-generating piles at one facility, e.g., two, 5,000 cubic yard piles will subject the facility to the requirements of this subsection.

(d) A run-on prevention system shall be designed and maintained to divert the maximum flow from a 25-year storm event.

(e) The Director may require that the entire base or liner shall be inspected for wear and integrity and repaired or replaced by removing stored wastes or otherwise providing inspection access to the base or liner; the request shall be in writing and cite the reasons including valid ground water monitoring or leachate detection data leading to request such an inspection, repair or replacement.

(3) The length of time that solid waste may be stored in piles shall not exceed 1 year unless the Director determines that the solid waste may be stored in piles for a longer time period without becoming a threat to human health or the environment.

(4) The Director or an authorized representative may enter and inspect a site where waste is stored in piles as specified in Subsection R315-302-2(5)(b).

R315-314-3. Requirements for a Waste Tire Storage Facility.

(1) The definitions of Section R315-320-2 are applicable to the requirements for a waste tire storage facility.

(2) No waste tire storage facility may be established, maintained, or expanded until the owner or operator of the waste tire storage facility has obtained a permit from the Director. The owner or operator of the waste tire storage facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) The owner or operator of a waste tire storage facility shall:

(a) submit the following for approval by the Director:

(i) the information required in Subsections R315-310-8;

(ii) a plan of operation as required by Subsection R315-302-2(2);

(iii) a plot plan of the storage site showing:

(A) the arrangement and size of the tire piles on the site;

(B) the width of the fire lanes and the type and location of the fire control equipment; and

(C) the location of any on-site buildings and the type of fencing to surround the site;

(iv) a financial assurance plan including the date that the financial assurance mechanism becomes effective; and

(v) a vector control plan;

(b) accumulate tires only in designated areas;

(c) control access to the storage site by fencing;

(d) limit individual tire piles to a maximum of 5,000 square feet of continuous area in size at the base of the pile;

(e) limit the individual tire piles to 50,000 cubic feet in volume or 10 feet in height;

(f) insure that piles be at least 10 feet from any property line or any building and not exceed 6 feet in height when within 20 feet of any property line or building;

(g) provide for a 40 foot fire lane between tire piles that contains no flammable or combustible material or vegetation;

(h) effect a vector control program, if necessary, to minimize mosquito breeding and the harborage of other vectors such as rats or other animals;

(i) provide on-site fire control equipment that is maintained in good working order;

(j) display an emergency procedures plan and inspection approval by the local fire department and require all employees to be familiar with the plan;

(k) establish financial assurance for clean-up and closure of the site:

(i) in the amount of $150 per ton of tires stored at the site; and

(ii) in the form of a trust fund, letter of credit, or other

mechanism as approved by the Director;

(l) maintain a record of the number of:

(i) tires received at the site;

(ii) tires shipped from the site

(iii) piles of tires at the site; and

(iv) tires in each pile; and

(m) meet the applicable reporting requirements of Subsection R315-302-2(4).

(4) Whole Tires Stored in a Tire Fence.

(a) Whole Tires stored in a tire fence are exempt from Subsections R315-314-3(3)(e), (f), and (g) but must:

(i) obtain a permit from the Director as required by Subsection R315-314-3(2);

(ii) receive approval for establishing, maintaining, or expanding the tire fence from the local government and the local fire department and submit documentation of these approvals to the Director; and

(iii) maintain the fence no more than one tire wide and eight feet high.

(b) An owner of a tire fence may receive a waiver from the requirements of Subsection R315-314-3(4)(a)(i) if the Director receives written notice from the owner of the tire fence on or before November 15, 1999 that documents and certifies that:

(i) the tire fence was in existence prior to October 15, 1999; and

(ii) no tires have been added to the fence after October 14, 1999.

(5) Each tire recycler, as defined by Subsection 19-6-803(19), that stores tires in piles prior to recycling shall comply with the following requirements:

(a) if the tire recycler documents that the waste tires are stored for five or fewer days, the tire recycler shall:

(i) meet the requirements of Subsections R315-314-3(3)(b) through (g); or

(ii) obtain a waiver from the requirements of Subsections R315-314-3(3)(b) through (g) from the local fire department; or

(b) if the tire recycler does not document that the waste tires are stored for five or fewer days, the tire recycler shall be considered a waste tire storage facility and shall:

(i) meet the requirements of Subsections R315-314-3(2) and (3); and

(ii) the amount of financial assurance required by Subsection R315-314-3(3)(l) shall be $150 per ton of tires held as the average inventory during the preceding year of operation.

KEY: solid waste management, waste disposal
April 25, 2013 **19-6-104**
Notice of Continuation February 13, 2013 **19-6-105**
19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-315. Special Waste Requirements.
R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions may include, where required and approved by the Director, a separate area for disposal of the wastes, designated by appropriate signs.

(2) Sections R315-315-2 through 9 are applicable to all solid waste facilities regulated by Rules R315-301 through 320.

R315-315-2. Asbestos Waste.

(1) Regulated asbestos-containing material to be disposed of shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Code of Federal Regulations, Title 40, Part 61, Section 154.

(2) No transporter or disposal facility shall accept regulated asbestos-containing material unless the waste has been adequately wetted and containerized.

(a) Regulated asbestos-containing material is adequately wetted when its moisture content prevents fiber release.

(b) Regulated asbestos-containing material is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Regulated asbestos-containing material slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. Upon submittal of a request, including documentation demonstrating safety, the Director may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All containers holding regulated asbestos-containing material shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold regulated asbestos-containing material.

(3) The following standards apply to the disposal of Regulated Asbestos-Containing Material;

(a) upon entering the disposal site, the transporter of the regulated asbestos-containing material shall notify the landfill operator that the load contains regulated asbestos-containing material by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days;

(b) upon receipt of the regulated asbestos-containing material, the landfill operator shall inspect the loads to verify that the regulated asbestos-containing material is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Director if the operator believes that the regulated asbestos-containing material is in a condition that may cause fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the regulated asbestos-containing material with a water spray prior to unloading, rinse out the truck, and immediately cover the regulated asbestos-containing material with material which prevents fiber release prior to compacting the regulated asbestos-containing material in the landfill.

(c) During deposition and covering of the regulated asbestos-containing material, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only regulated asbestos-containing material, or may dispose of the regulated asbestos-containing material at the working face of the landfill;

(ii) shall place the regulated asbestos-containing material containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours or at the end of the operating day, shall completely cover the containerized regulated asbestos-containing material with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no regulated asbestos-containing material. If the regulated asbestos-containing material is improperly containerized, it must be completely covered immediately with six inches of material containing no regulated asbestos-containing material; and

(iv) shall not compact regulated asbestos-containing material until completely covered with a minimum of six inches of material containing no regulated asbestos-containing material.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the regulated asbestos-containing material management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 330 feet along the perimeter of the sections where regulated asbestos-containing material is deposited that comply with the requirements of 40 CFR 61.154(b); and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell, but not in an area that will compromise the integrity of the liner system, or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) Sludges, if they contain no free liquids, may be placed in the landfill working face and covered with other solid waste or other suitable cover material.

(2) Disposal of any type of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

(1) Dead animals shall be managed and disposed in a manner that minimizes odors and the attraction, harborage, or propagation of insects, rodents, birds, or other animals.

(2) Dead animals may be disposed at the active working face of a permitted landfill or in a separate trench, at a permitted facility, specifically prepared to receive dead animals.

(a) If dead animals are disposed at the active working face of a permitted landfill, the carcasses shall be immediately covered with a minimum of two feet of soil other material.

(b) If dead animals are disposed in a separate trench, at a permitted facility, the carcasses shall be completely covered with a minimum of six inches of earth at the end of the working day the carcasses are received.

R315-315-7. PCB Containing Waste.

(1) Any facility that disposes of nonhazardous waste, hazardous waste, or radioactive waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following wastes containing PCBs may be disposed in a permitted Class I, II, III, IV, V, or VI Landfill; permitted incinerator; permitted energy recovery facility; or a facility permitted by rule under Rule R315-318:

(a) waste, as specified by 40 CFR 761.61, containing PCBs at concentrations less than 50 ppm;

(b) PCB household waste as defined by 40 CFR 761.3 ; and

(c) small quantities, 10 or fewer, of intact, non-leaking, small PCB capacitors, including capacitors from fluorescent lights x-ray machines, and other machines and test equipment.

(3) Waste containing PCBs at concentrations of 50 ppm or higher are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320, except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher for treatment or disposal:

(i) a facility permitted prior to July 15, 1993 under 40 CFR 761.70, .75 or .77; or

(ii) a facility permitted after July 15, 1993 under 40 CFR 761.70, .71, .72, .75, or .77 and approved by the Director under Rules R315-301 through 320; or

(b) a Class I or V landfill that has a liner and ground water monitoring or an incinerator that meets the requirements of Subsection R315-315-7(a)(i) or (ii) and when approved by the Director, may dispose of the following PCB wastes:

(i) PCB bulk products regulated by 40 CFR 761.62(b);

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3;

(iii) drained PCB articles, including drained PCB transformers, as defined by 40 CFR 761.3;

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A);

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii); or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2).

(c) If a unit of a permitted landfill is approved to receive PCB containing wastes under Subsection R315-315-7(3)(b), the owner or operator of the landfill:

(i) shall modify the approved Ground Water Monitoring Plan to include the testing of the ground water samples for PCB containing constituents at appropriate detection levels; and

(ii) shall test the leachate generated at the unit of the landfill for PCB's.

R315-315-8. Petroleum Contaminated Soils.

(1) Terms used in Section R315-315-8 are defined in Section R315-301-2. For the purpose of Section R315-315-8 and in addition to the definitions in Section R315-301-2, the following definition applies: "Petroleum contaminated soils" means soils that have been contaminated with either diesel or gasoline or both.

(2) Petroleum contaminated soils that are not a hazardous waste may be accepted for disposal at a:

(a) Class I Landfill;

(b) Class II Landfill;

(c) Class III Landfill; or

(d) Class V Landfill.

(3) Petroleum contaminated soils containing the following constituents at or below the following levels and are otherwise not a hazardous waste, may be accepted for disposal at a Class IV or VI Landfill:

(a) Benzene, 0.03 mg/kg;

(b) Ethylbenzene, 13 mg/kg;

(c) Toluene, 12 mg/kg; and

(d) Xylenes, 200 mg/kg.

R315-315-9. Waste Asphalt.

(1) The preferred management of waste asphalt is recycling. Recycling of waste asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering requirements.

(2) If waste asphalt is disposed, it shall be disposed in a permitted landfill.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105
Notice of Continuation February 13, 2013

R315. Environmental Quality, Solid and Hazardous Waste.
R315-316. Infectious Waste Requirements.
R315-316-1. Applicability.

(1) The standards of Rule R315-316 apply to:

(a) any health facility that generates more than 200 pounds, per month, of infectious waste;

(b) any transporter that collects and transports more than 200 pounds of infectious waste in any one load; and

(c) a facility storing more than 200 pounds of infections waste, or a facility treating or disposing of infectious waste.

(2) The standards of Rule R315-316 do not apply to

(a) any health facility that generates 200 pounds, or less, of infectious waste per month;

(b) any transporter that:

(i) collects and transports 200 pounds or less of infectious waste from all generators in any one load; or

(ii) collects infectious waste only from facilities that generate 200 pounds or less of infectious waste per week; and

(c) infectious waste generated by a household.

R315-316-2. General Operational Requirements.

(1) Every owner and operator of a health facility or a transporter of infectious waste, regulated by Rule R315-316, that generates, transports, stores, treats, or disposes of infectious waste must prepare and maintain on file a management plan for the waste that identifies the:

(a) type and estimated quantity of waste generated or handled;

(b) segregation, packaging, and labeling procedures;

(c) collection, storage, and transportation procedures;

(d) treatment or disposal methods that will be used; and

(e) the person responsible for the management of the infectious waste.

(2) Infectious waste consisting of recognizable human anatomical remains including human fetal remains shall be disposed by incineration or interment in a location appropriate for human remains.

(3) For the purposes of Rule R315-316 "sharps" means any object that may be contaminated with a pathogen and that is capable of cutting or penetrating skin or a packaging material.

R315-316-3. Storage and Containment Requirements.

(1) Infectious waste shall be contained in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects or rodents, and minimizes exposure to the public.

(2) Unless all waste is considered infectious and labeled as such, infectious waste shall be segregated by separate containment from other waste during storage.

(3) Except for sharps, infectious waste shall be contained in plastic bags or inside rigid containers. The bags shall be securely tied and the containers shall be securely sealed to prevent leakage or expulsion of solid or liquid wastes during storage or handling.

(4) Sharps shall be contained for storage, transportation, treatment, and disposal in leak-proof, rigid, puncture-resistant containers which are taped closed or tightly lidded to preclude loss of contents.

(5) All infectious waste containers should be red or orange and shall be clearly identified with the international biohazard sign and one of the following labels: "INFECTIOUS WASTE", "BIOMEDICAL WASTE", or "BIOHAZARD".

(6) If other waste is placed in the same container as infectious waste, then the generator must package, label, and mark the container and its entire contents as infectious waste.

(7) A rigid infectious waste container may be reused for infectious or non-infectious waste if it is thoroughly washed and decontaminated each time it is emptied or if the surfaces of the container have been completely protected from contamination by disposable, unpunctured, or undamaged liners, bags, or other devices that are removed with the infectious waste, the surface of the liner has not been damaged or punctured.

(8) Storage and containment areas shall: protect infectious waste from the elements; be ventilated to the outside atmosphere; be accessible only to authorized persons; and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall contain the international biohazard sign and shall state: "CAUTION -- INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and must be easily read during daylight from a distance of 25 feet.

(9) If infectious waste is stored longer than seven days, the infectious waste shall be stored at or below a temperature of 40 degrees Fahrenheit (5 degrees Celsius).

(10) Under no conditions may infectious waste be stored for longer than 60 days.

(11) Compactors, grinders, or similar devices shall not be used to reduce the volume of infectious waste unless the device is contained sufficiently to prevent contamination of the surrounding area.

R315-316-4. Infectious Waste Transportation Requirements.

(1) Infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle or unless all of the waste is to be treated as infectious waste in accordance with Rule R315-316.

(2) Persons manually loading or unloading containers of infectious waste onto or from transport vehicles shall:

(a) be trained in the proper use of protective equipment;

(b) have available and easily accessible at all times puncture resistant gloves and shoes, shatterproof glasses, and coveralls; and

(c) shall have face shields and respirators available.

(d) Protective gear that becomes soiled with infectious waste shall be decontaminated or disposed as infectious waste.

(3) Surfaces of transport vehicles that have contacted spilled or leaked infectious waste shall be decontaminated by procedures approved by the Director.

(4) Vehicles transporting infectious waste shall meet all warning requirements of the Department of Transportation related to infectious, biohazardous or biomedical waste.

(5) Each truck, trailer, or semitrailer, or container used for transporting infectious waste shall be designed and constructed, and its contents limited, so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment.

(6) Any truck, trailer, semitrailer, or container used for transporting infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation.

(7) No person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by this section.

(8) All transporter vehicles shall carry a spill containment and cleanup kit and the transport workers shall be trained in spill containment and cleanup procedures.

R315-316-5. Infectious Waste Treatment and Disposal Requirements.

(1) Infectious waste shall be treated or disposed as soon as possible and shall be treated or disposed at a facility with a permit or other form of approval allowing the facility to treat or dispose infectious waste.

(2)(a) All material that has been rendered non-infectious through an approved treatment method may be handled as non-

infectious solid waste, provided it is not otherwise a hazardous waste or a radioactive waste excluded from disposal in a solid waste facility by Rules R315-301 through 320.

(b) Except for incineration and steam sterilization, no treatment method may be used to render materials non-infectious without receiving prior approval from the Director.

(3) Infectious waste may be incinerated in an incinerator provided the incinerator is permitted or approved under Rules R315-301 through 320.

(4) Infectious waste may be sterilized by heating in a steam sterilizer to render the waste non-infectious.

(a) The operator shall have available, and shall certify in writing that he understands, written operating procedures for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure of container, pattern of loading, water content, and maximum load quantity.

(b) Infectious waste shall be subjected to sufficient temperature, pressure and time to inactivate Bacillus stearothermophilus spores in the center of the waste load at a 6 Log_{10} reduction or greater.

(c) Unless a steam sterilizer is equipped to continuously monitor and record temperature and pressure during the entire length of each sterilization cycle, each package of infectious waste to be sterilized shall have a temperature-sensitive tape or equivalent test material, such as chemical indicators, attached that will indicate if the sterilization temperature and pressure have been reached. Waste shall not be considered sterilized if the tape or equivalent indicator fails to indicate that a temperature of at least 250 degrees Fahrenheit (121 degrees Celsius) was reached and a pressure of at least 15 psi was maintained during the process.

(d) Each sterilization unit shall be evaluated for effectiveness with spores of B. stearothermophilus at least once each 40 hours of operation or each week, whichever is less frequent.

(e) A written log for each load shall be maintained for each sterilization unit which shall contain at a minimum:

(i) the time of day and the date of each load and the operator's name;

(ii) the amount and type of infectious waste placed in the sterilizer; and

(iii) the temperature, pressure, and duration of treatment.

(5)(a) Alternative treatment methods may be approved on a site-specific basis when the Director finds the proposed alternative treatment method renders the material non-infectious.

(b) The determination shall be based on the results of laboratory tests, submitted by the person proposing the use of the treatment method, meeting the following requirements:

(i) the laboratory tests shall be conducted:

(A) by qualified laboratory personnel;

(B) using recognized microbial techniques;

(C) on samples that have been inoculated with the test organisms, then subjected to the proposed treatment method and processed in an identical way to the treatment process being proposed for approval; and

(ii) the results of the tests must document that the proposed treatment method inactivates:

(A) vegetative bacteria - Staphylococcus aureus (ATCC 6538) or Pseudomonas aeruginosa (ATCC 15442) at a 6 Log_{10} reduction or greater (a 99.9999% reduction or greater of the organism population);

(B) fungi - Candida albicans (ATCC 18804), Penicillium chrysogenum (ATCC 24791), or Aspergillus niger at a 6 Log_{10} reduction or greater;

(C) viruses - Polio 2, Polio 3, or MS-2 Bacteriophage (ATCC15597-B1) at a 6 Log_{10} reduction or greater;

(D) parasites - Cryptosporidium spp. oocysts or Giardia spp. cysts at a 6 Log_{10} reduction or greater;

(E) mycobacteria - Mycobacterium terrae or Mycobacterium phlei at a 6 Log_{10} reduction or greater; and

(B) Bacterial spores - Bacillus stearothermophilus spores (ATCC 7953) or Bacillus subtilis spores (ATCC 19659) at a 4 Log_{10} reduction or greater (a 99.99% reduction or greater of the organism population).

(iii) The Director shall review the submitted materials and reply in writing within 30 days of the receipt of the treatment studies.

(6) Infectious waste may be discharged to a sewage treatment system that provides secondary treatment of waste but only if the waste is liquid or semi-solid and if approved by the operator of the sewage treatment system.

(7) Infectious waste may be disposed in a permitted Class I, II, or V Landfill. Upon entering the landfill, the transporter of infectious waste shall notify the landfill operator that the load contains infectious waste. The landfill operator shall abide by the following procedures in the disposition and covering of infectious waste:

(a) place the infectious waste containers in the working face with sufficient care to avoid breaking them;

(b) completely cover the infectious waste immediately with a minimum of 12 inches of earth or waste material containing no infectious waste; and

(c) not compact the infectious waste until completely covered with 12 inches of earth or waste material containing no infectious waste.

KEY: solid waste management, waste disposal
April 25, 2013 19-6-105
Notice of Continuation February 13, 2013

R315. Environmental Quality, Solid and Hazardous Waste.
R315-317. Other Processes, Variances, Violations, and Petition for Rule Change.
R315-317-1. Other Processes, Methods, and Equipment.

Processes, methods, and equipment other than those specifically addressed in Rules R315-301 through 320 will be considered on an individual basis by the Director upon submission of evidence of adequacy to meet the minimum standards of performance to protect human health and the environment as required in Section R315-303-2.

R315-317-2. Variances.

(1) Variances will be granted in accordance with Section R315-2-13.

R315-317-3. Violations, Orders, and Hearings.

(1) Whenever the Director or his duly appointed representative determines that any person is in violation of any applicable approved solid waste operation plan or permit or the requirements of Rules R315-301 through 320, the Director may cause written notice of violation to be served upon the alleged violators. The notice shall specify the provisions of the plan, permit, or rules alleged to have been violated and the facts alleged to constitute the violation. The Director may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of the permit requirements or the requirements of Rules R315-301 through 320.

(2) Any order issued pursuant to Subsection R315-317-3(1) shall become final unless, within 30 days after the order is issued, the person to whom the order is addressed challenges the order as provided in 19-1-301 and the Utah Administrative Procedures Act, Title 63G, Chapter 4 and shall be governed by UAC R305-7.

R315-317-4. Petition for Rule Change.

(1) The requirements of Section R315-317-4 shall apply to a petition for:

(a) making a new rule;

(b) amending, repealing, or repealing and reenacting and existing rule;

(c) amending a proposed rule;

(d) allowing a proposed rule or change in proposed rule to lapse; or

(e) any combination of the above.

(2) Petition Procedure and Form.

(a) The petition shall be addressed and delivered to the Director.

(b) The petition shall follow the requirements of Sections R15-2-3 through 5.

KEY: solid waste management, waste disposal

April 25, 2013	**19-6-105**
Notice of Continuation February 13, 2013	**19-6-108**
	19-6-109
	19-6-111
	19-6-112

R315. Environmental Quality, Solid and Hazardous Waste.
R315-318. Permit by Rule.
R315-318-1. General Requirements.

(1) Any facility that disposes of solid waste, including an incinerator, may be permitted by rule upon application to the Director if the Director determines the facility is regulated by Federal or state agencies which have regulations or rules as stringent as, or more stringent than, Rules R315-301 through R315-320.

(2) No permit by rule may be granted to a facility that began receiving waste after July 15, 1993 without application to the Director.

(3) Any facility permitted by rule is not required to obtain a permit as required by Subsection R315-301-5(1) and Subsection R315-310-1(1) but may be required to follow operational practices, as determined by the Director, to minimize risk to human health or the environment.

(4) In no case may a facility operating under a permit by rule approved by the Director conduct disposal operations that are in violation of the Utah Solid and Hazardous Waste Act or Rules R315-301 through R315-320.

R315-318-2. Facilities Permitted by Rule.

(1) The following facilities that began receiving waste prior to July 15, 1993 are permitted by rule:

(a) solid waste disposal and incineration facilities which are required to operate under the conditions of a state or Federal hazardous waste permit or plan approval;

(b) disposal operations or activities which are required to operate under the conditions of a Utah Division of Oil, Gas, and Mining permit or plan approval;

(c) non-commercial underground injection facilities regulated by the Utah Division of Water Quality; and

(d) disposal operations or activities which accept only radioactive waste and are required to operate under the conditions of a Utah Division of Radiation Control permit or plan approval.

(2) An underground storage tank, as defined by 40 CFR 280.12 and Subsection R311-200-1(43), that by meeting the requirements specified in 40 CFR 280.71(b) and Section R311-204-3, is closed in place, may be permitted by rule after meeting the following conditions:

(a) the owner of the underground storage tank shall notify the Director of the in place closure; and

(b) the owner of the underground storage tank shall provide documentation to the Director that the requirements of Subsection R315-302-2(6) have been met.

KEY: solid waste management, waste disposal

April 25, 2013	**19-6-104**
Notice of Continuation February 13, 2013	**19-6-105**
	19-6-108

R315. Environmental Quality, Solid and Hazardous Waste.
R315-320. Waste Tire Transporter and Recycler Requirements.
R315-320-1. Authority, Purpose, and Inspection.

(1) The waste tire transporter and recycler requirements are promulgated under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, and the Solid and Hazardous Waste Act Title 19, Chapter 6, to protect human health; to prevent land, air and water pollution; to conserve the state's natural, economic, and energy resources; and to promote recycling of waste tires.

(2) Except for Subsections R315-320-4(7) and R315-320-5(7), which apply to the application fees for the registration of a waste tire transporter and a waste tire recycler throughout the state, Rule R315-320 does not supersede any ordinance or regulation adopted by the governing body of a political subdivision or local health department if the ordinance or regulation is at least as stringent as Rule R315-320, nor does Rule R315-320 relieve a tire transporter or recycler from the requirement to meet all applicable local ordinances or regulations.

(3) The Director or an authorized representative may enter and inspect the site of a waste tire transporter or a waste tire recycler as specified in Subsection R315-302-2(5)(b).

R315-320-2. Definitions.

Terms used in Rule R315-320 are defined in Sections R315-301-2 and 19-6-803. In addition, for the purpose of Rule R315-320, the following definitions apply:

(1) "Demonstrated market" or "market" means the legal transfer of ownership of material derived from waste tires between a willing seller and a willing buyer meeting the following conditions:

(a) total control of the material derived from waste tires is transferred from the seller to the buyer;

(b) the transfer of ownership and control is an "arms length transaction" between a seller and a buyer who have no other business relationship or responsibility to each other;

(c) the transaction is done under contract which is documented and verified by orders, invoices, and payments; and

(d) the transaction is at a price dictated by current economic conditions.

(e) the possibility or potential of sale does not constitute a demonstrated market.

(2) "Waste tire generator" means a person, an individual, or an entity that may cause waste tires to enter the waste stream. A waste tire generator may include:

(a) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, or other person, individual, or entity that removes or replaces tires on a vehicle; or

(b) a tire dealer, a car dealer, a trucking company, an owner or operator of an auto salvage yard, a waste tire transporter, a waste tire recycler, a waste tire processor, a waste tire storage facility, or a disposal facility that receives waste tires from a person, an individual, or an entity.

R315-320-3. Landfilling of Waste Tires and Material Derived from Waste Tires.

(1) Disposal of waste tires or material derived from waste tires is prohibited except as allowed by Subsection R315-320-3(2) or (3).

(2) Landfilling of Whole Tires. A landfill may not receive whole waste tires for disposal except as follows:

(a) waste tires delivered to a landfill no more than four whole tires at one time by an individual, including a waste tire transporter; or

(b) waste tires from devices moved exclusively by human power; or

(c) waste tires with a rim diameter greater than 24.5 inches.

(3) Landfilling of Material Derived from Waste Tires.

(a) A landfill, which has a permit issued by the Director, may receive material derived from waste tires for disposal.

(b) Except for the beneficial use of material derived from waste tires at a landfill, material derived from waste tires shall be disposed in a separate landfill cell that is designed and constructed, as approved by the Director, to keep the material in a clean and accessible condition so that it can reasonably be retrieved from the cell for future recycling.

(4) Reimbursement for Landfilling Shredded Tires.

(a) The owner or operator of a permitted landfill may apply for reimbursement for landfilling shredded tires as specified in Subsection R315-320-6(1).

(b) To receive the reimbursement, the owner or operator of the landfill must meet the following conditions:

(i) the waste tires shall be shredded;

(ii) the shredded tires shall be stored in a segregated cell or other landfill facility that ensures the shredded tires are in a clean and accessible condition so that they can be reasonably retrieved and recycled at a future time; and

(iii) the design and operation of the landfill cell or other landfill facility has been reviewed and approved by the Director prior to the acceptance of shredded tires.

(5) Violation of Subsection R315-320-3(1), (2), or (3) is subject to enforcement proceedings and a civil penalty as specified in Subsection 19-6-804(4).

R315-320-4. Waste Tire Transporter Requirements.

(1) Each waste tire transporter who transports waste tires within the state of Utah must apply for, receive and maintain a current waste tire transporter registration certificate from the Director.

(2) Each applicant for registration as a waste tire transporter shall complete a waste tire transporter application form provided by the Director and provide the following information:

(a) business name;
(b) address to include:
(i) mailing address; and
(ii) site address if different from mailing address;
(c) telephone number;
(d) list of vehicles used including the following:
(i) description of vehicle;
(ii) license number of vehicle;
(iii) vehicle identification number; and
(iv) name of registered owner;
(e) name of business owner;
(f) name of business operator;
(g) list of sites to which waste tires are to be transported;
(h) liability insurance information as follows:
(i) name of company issuing policy;
(ii) amount of liability insurance coverage; and
(iii) term of policy.
(i) meet the requirements of R315-320-4(3)(b) and (c).

(3) A waste tire transporter shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising form transporting waste tires. The waste tire transporter shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000;

(b) for the initial application for a waste tire transporter registration or for any subsequent application for registration at a site not previously registered, demonstrate to the Director that all local government requirements for a waste tire transporter have been met, including obtaining all necessary permits or approvals where required; and

(c) demonstrate to the Director that the waste tires transported by the transporter are taken to a registered waste tire recycler or that the waste tires are placed in a permitted waste tire storage facility that is in full compliance with the requirements of Rule R315-314. Filling of a complete report as required in Subsection R315-320-4(9) shall constitute compliance with this requirement.

(4) A waste tire transporter shall notify the Director of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-4(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-4(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-4(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire transporter registration certificate is not transferable and shall be issued for the term of one year.

(7) If a waste tire transporter is required to be registered by a local government or a local health department:

(a) the waste tire transporter may be assessed an annual registration fee by the local government or the local health department not to exceed to the following schedule:

(i) for one through five trucks, $50; and

(ii) $10 for each additional truck;

(b) the Director shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-4(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-4(5)(c), if the fee allowed in Subsection R315-320-4(7)(a) is paid; and

(c) the registration certificate shall be valid for one year.

(8) Waste tire transporters storing tires in piles must meet the requirements of Rule R315-314.

(9) Reporting Requirements.

(a) Each waste tire transporter shall submit a quarterly activity report to the Director. The activity report shall be submitted on or before the 30th of the month following the end of each quarter.

(b) The activity report shall contain the following information:

(i) the number of waste tires collected at each waste tire generator, including the name, address, and telephone number of the waste tire generator;

(ii) the number of tires shall be listed by the type of tire based on the following:

(A) passenger/light truck tires or tires with a rim diameter of 19.5 inches or less;

(B) truck tires or tires ranging in size from 7.50x20 to 12R24.5; and

(C) other tires such as farm tractor, earth mover, motorcycle, golf cart, ATV, etc.

(iii) the number or tons of waste tires shipped to each waste tire recycler or processor for a waste tire recycler, including the name, address, and telephone number of each recycler or processor;

(iv) the number of tires shipped as used tires to be resold;

(v) the number of waste tires placed in a permitted waste tire storage facility; and

(vi) the number of tires disposed in a permitted landfill, or put to other legal use.

(c) The activity report may be submitted in electronic format.

(10) Revocation of Registration.

(a) The registration of a waste tire transporter may be revoked upon the Director finding that:

(i) the activities of the waste tire transporter that are regulated under Section R315-320-4 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire transporter has made a material misstatement of fact in applying for or obtaining a registration as a waste tire transporter or in the quarterly activity report required by Subsection R315-320-4(9);

(iii) the waste tire transporter has provided a recycler with a material misstatement of fact which the recycler subsequently used as documentation in a request for partial reimbursement under Section 19-6-813;

(iv) the waste tire transporter has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopter under the Act;

(v) the waste tire transporter failed to meet or no longer meets the requirements of Section R315-320-4;

(vi) the waste tire transporter has been convicted under Subsection 19-6-822; or

(vii) the waste tire transporter has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-4(10)(a), the statements, actions, or failure to act of a waste tire transporter shall include the statements, actions, or failure to act of any officer, director, agent or employee of the waste tire transporter.

(d) The administrative procedures set forth in Rule R315-12 shall govern revocation of registration.

R315-320-5. Waste Tire Recycler Requirements.

(1) Each waste tire recycler requesting the reimbursement allowed by Subsection 19-6-809(1), must apply for, receive, and maintain a current waste tire recycler registration certificate from the Director.

(2) Each applicant for registration as a waste tire recycler shall complete a waste tire recycler application form provided by the Director and provide the following information:

(a) business name;

(b) address to include:

(i) mailing address; and

(ii) site address if different from mailing address;

(c) telephone number;

(d) owner name;

(e) operator name;

(f) description of the recycling process;

(g) proof that the recycling process described in Subsection R315-320-5(2)(f) :

(i) is being conducted at the site; or

(ii) for the initial application for a recycler registration, that the recycler has the equipment in place and the ability to conduct the process at the site;

(h) estimated number of tires to be recycled each year;

(i) liability insurance information as follows:

(i) name of company issuing policy;

(ii) proof of the amount of liability insurance coverage; and

(iii) term of policy; and

(j) meet the requirements of Subsection R315-320-5(3)(b).

(3) A waste tire recycler shall:

(a) demonstrate financial responsibility for bodily injury and property damage, including bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from storing and recycling waste tires. The waste tire recycler shall have and maintain liability coverage for sudden or nonsudden accidental occurrences in the amount of $300,000; and

(b) for the initial application for a recycler registration or

for any subsequent application for registration at a site not previously registered, demonstrate to the Director that all local requirements for a waste tire recycler have been met, including obtaining all necessary permits or approvals where required.

(4) A waste tire recycler shall notify the Director of:

(a) any change in liability insurance coverage within 5 working days of the change; and

(b) any other change in the information provided in Subsection R315-320-5(2) within 20 days of the change.

(5) A registration certificate will be issued to an applicant following the:

(a) completion of the application required by Subsection R315-320-5(2);

(b) presentation of proof of liability coverage as required by Subsection R315-320-5(3); and

(c) payment of the fee as established by the Annual Appropriations Act.

(6) A waste tire recycler registration certificate is not transferable and shall be issued for a term of one year.

(7) If a waste tire recycler is required to be registered by a local government or a local health department:

(a) the waste tire recycler may be assessed an annual registration fee by the local government or local health department according to the following schedule:

(i) if up to 200 tons of waste tires are recycled per day, the fee shall not exceed $300;

(ii) if 201 to 700 tons of waste tires are recycled per day, the fee shall not exceed $400; or

(iii) if over 700 tons of waste tires are recycled per day, the fee shall not exceed $500.

(b) The Director shall issue a non-transferable registration certificate upon the applicant meeting the requirements of Subsections R315-320-5(2) and (3) and shall not require the payment of the fee specified in Subsection R315-320-5(5)(c), if the fee allowed by Subsection R315-320-5(7)(a) is paid.

(c) The registration certificate shall be valid for one year.

(8) Waste tire recyclers must meet the requirements of Rule R315-314 for waste tires stored in piles.

(9) Revocation of Registration.

(a) The registration of a waste tire recycler may be revoked upon the Director finding that:

(i) the activities of the waste tire recycler that are regulated under Section R315-320-5 have been or are being conducted in a way that endangers human health or the environment;

(ii) the waste tire recycler has made a material misstatement of fact in applying for or obtaining a registration as a waste tire recycler;

(iii) the waste tire recycler has made a material misstatement of fact in applying for partial reimbursement under Section 19-6-813;

(iv) the waste tire recycler has violated any provision of the Waste Tire Recycling Act, Title 19 Chapter 6, or any order, approval, or rule issued or adopted under the Act;

(v) the waste tire recycler has failed to meet or no longer meets the requirements of Subsection R315-320-5(1);

(vi) the waste tire recycler has been convicted under Subsection 19-6-822; or

(vii) the waste tire recycler has had the registration from a local government or a local health department revoked.

(b) Registration will not be revoked for submittal of incomplete information required for registration or a reimbursement request if the error was not a material misstatement.

(c) For purposes of Subsection R315-320-5(9)(a), the statements, action, or failure to act of a waste tire recycler shall include the statements, actions, or failure to act of any officer, director, agent, or employee of the waste tire recycler.

(d) The administrative procedures set forth in Rule R315-12 shall govern revocation of registration.

R315-320-6. Reimbursement for Recycling Waste Tires.

(1) No partial reimbursement request submitted by a waste tire recycler for the first time, or the first time a specific recycling process or a beneficial use activity is used, shall be approved by a local health department under Section 19-6-813 until the local health department has received from the Director a written certification that the Director has determined the processing of the waste tires is recycling or a beneficial use. If the reimbursement request contains sufficient information, the Director shall make the recycling or beneficial use determination and notify the local health department in writing within 15 days of receiving the request for determination.

(2) No partial reimbursement may be requested or paid for waste tires that were generated in Utah and recycled at an out-of-state location except as allowed by Subsection 19-6-809(1)(a)(ii)(C) or (D).

(3) In addition to any other penalty imposed by law, any person who knowingly or intentionally provides false information required by Section R315-320-5 or Section R315-320-6 shall be ineligible to receive any reimbursement and shall return to the Division of Finance any reimbursement previously received that was obtained through the use of false information.

R315-320-7. Reimbursement for the Removal of an Abandoned Tire Pile or a Tire Pile at a Landfill Owned by a Governmental Entity.

(1) A county or municipality applying for payment for removal of an abandoned tire pile or a tire pile at a county or municipal owned landfill shall meet the requirements of Section 19-6-811.

(2) Determination of Reasonability of a Bid.

(a) The following items shall be submitted to the Director when requesting a determination of reasonability of a bid as specified in Subsections 19-6-811(3) and (4):

(i) a copy of the bid;

(ii) a letter from the local health department stating that the tire pile is abandoned or that the tire pile is at a landfill owned or operated by a governmental entity; and

(iii) a written statement from the county or municipality that the bidding was conducted according to the legal requirements for competitive bidding.

(b) The Director will review the submitted documentation in accordance with Subsection 19-6-811(4) and will inform the county or municipality if the bid is reasonable.

(c) A determination of reasonability of the bid will be made and the county or municipality notified within 30 days of receipt of the request by the Director.

(d) A bid determined to be unreasonable shall not be deemed eligible for reimbursement.

(3) If the Director determines that the bid to remove waste tires from an abandoned waste tire pile or from a waste tire pile at a landfill owned or operated by a governmental entity is reasonable and that there are sufficient monies in the trust fund to pay the expected reimbursements for the transportation, recycling, or beneficial use under Section 19-6-809 during the next quarter, the Director may authorize a maximum reimbursement of:

(a) 100% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if no waste tires have been added to the waste tire pile after June 30, 2001; or

(b) 60% of a waste tire transporter's or recycler's costs allowed under Subsection 19-6-811(2) to remove the waste tires from the waste tire pile and deliver the waste tires to a recycler if waste tires have been added to the waste tire pile after June 30, 2001.

KEY: solid waste management, waste disposal

April 25, 2013	**19-6-105**
Notice of Continuation February 13, 2013	**19-6-819**

R357-6. Technology and Life Science Economic Development and Related Tax Credits.

R357-6-1. Purpose.

(1) The purpose of these rules is to provide:

(a) the criteria upon which the Governor's Office of Economic Development will determine whether to award tax credits to applicants;

(b) the procedures for documenting the Governor's Office of Economic Development's application of this criteria;

(c) the procedures by which the Governor's Office of Economic Development issues tax credit certificates;

(d) the available tax credits for which applicants may apply.

R357-6-2. Authority.

(1) UCA 63M-1-2907 requires the office to make rules establishing criteria to prioritize the issuance of tax credits among applicants and to establish procedures for documenting the office's application of the criteria.

R357-6-3. Definitions.

(1) Terms in these rules are used as defined in UCA 63M-1-2902.

R357-6-4. Conditions.

(1) Applicants shall use the application form provided by the office and follow the procedures and requirements set forth in UCA 63M-1-2905 for obtaining a tax credit certificate.

(2) Applicants shall submit the application form to the office to be eligible to receive a tax credit, quarterly throughout the fiscal year as set forth in UCA 63M-1-2908, on or before the following quarterly deadlines:

(a) September 1; and

(b) December 1; and

(c) March 1; and

(d) June 1.

(3) The office shall review and rank for approval accepted applications based upon the following criteria:

(a) The overall economic impact on the state related to providing tax credits, taking into account such factors as:

(i) the number of new incremental jobs to Utah; or

(ii) capital investment in the state; or

(iii) new state revenues; or

(iv) any combination of Subsections (i), (ii), or (iii).

(4) The office shall keep a record of the review and ranking of applications based on the criteria in subsection (2).

(5) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (2) and (3) and according to the requirements and procedures set forth in UCA 63M-1-2909.

(6) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (4) with the business entity.

R357-6-5. Available Tax Credits.

(1) An applicant may seek one of two types of tax credits, drawn from funds expressly set aside by the Legislature:

(a) a refundable tax credit for generating state tax revenue; or

(b) a non-refundable tax credit for investment in certain life sciences establishments.

(2) Eligibility shall be determined by:

(a) statutory requirements; and

(b) the criteria listed in R357-6-4(2).

KEY: economic development, life sciences, new state revenue

R357. Governor, Economic Development.
R357-9. Alternative Energy Development Tax Incentives.
R357-9-1. Purpose.

(1) The purpose of these rules is to establish:

(a) The standards an alternative energy entity shall meet to qualify for a tax credit;

(b) The procedures by which the Governor's Office of Economic Development issues tax credit certificates.

R357-9-2. Authority.

(1) UCA 63M-1-3013(1)(a) requires the office to make rules setting the standards an alternative energy entity shall meet to qualify for a tax credit.

R357-9-3. Definitions.

(1) Terms in these rules are used as defined in UCA 63M-1-3102.

R357-9-4. Standards.

(1) Applicants shall use the application form provided by the office and follow the procedures and requirements set forth in UCA 63M-1-3104 for obtaining a tax credit certificate.

(2) The office shall review accepted applications based upon the following criteria:

(a) Compliance with the requirements set forth in UCA 63M-1-3103;

(b) The overall economic impact on the state related to providing the tax credit, taking into account such factors as:

(i) the number of new incremental jobs to Utah; or

(ii) capital investment in the state; or

(iii) new state revenues; or

(iv) any combination of Subsections (i), (ii), or (iii).

(3) The office shall keep a record of the review of applications based on the criteria in subsection (2).

(4) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (2) and (3) and according to the requirements and procedures set forth in UCA 63M-1-3104.

(5) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (4) with the business entity.

KEY: economic development, alternative energy, tax credits
May 1, 2013 63M-1-3101

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-51. Dental, Orthodontia.
R414-51-1. Introduction and Authority.

(1) The Medicaid Orthodontia Program provides orthodontia services for Medicaid eligible children who have a handicapping malocclusion as a result of birth defects, accident, or abnormal growth patterns, and for Medicaid eligible pregnant women who have a handicapping malocclusion as a result of a recent accident or disease, of such severity that they are unable to masticate, digest, or benefit from their diet.

(2) Orthodontia services are authorized by 42 CFR 440.100(a), 440.225, 441.56(b)(2), 441.57, October, 1997 ed, which are adopted and incorporated by reference.

R414-51-2. Definitions.

In addition to the definitions in R414-1, the following definitions also applies to this rule:

(1) "Adult" means an individual who is 21 years of age or older;

(2) "Child" means an individual who is under 21 years of age;

(3) "Salzmann's Index" means the "Handicapping Malocclusion Assessment Record" by J. A. Salzmann, used for assessment of handicapping malocclusion, as adopted by the Board of Directors of the American Association of Orthodontists and the Council on Dental Health of the American Dental Association. This index provides a universal numerical measurement of the total malocclusion.

R414-51-3. Client Eligibility Requirements.

Orthodontia services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program.

R414-51-4. Program Access Requirements.

(1) Orthodontia services are available to children who meet the requirements of having a handicapping malocclusion identified in an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) exam.

(2) The Department shall determine the medical necessity for orthodontia services for each individual whether a child or a pregnant woman based upon:

(a) the evaluation of the malocclusion using the Salzmann's Index from models of the teeth submitted by the dentist or orthodontist; and

(b) evidence of medical necessity provided by the primary dentist, the orthodontist, or the physician.

(3) The primary care physician, or the physician or dentist who completes the EPSDT screening examination, may contribute information pertaining to the medical necessity for services.

(4) Qualified Providers.

Dentists, oral and maxillofacial surgeons, and orthodontists may provide any part of the orthodontic services for which they are qualified.

R414-51-5. Service Coverage.

(1) Medicaid considers a Salzmann's Index score of 30 or more a level of handicapping malocclusion for which orthodontia is a covered service.

(2) Service coverage includes:

(a) a wax bite and study models of the teeth;

(b) removal of teeth, or other surgical procedures, if necessary to prepare for an orthodontic appliance;

(c) attachment of an orthodontic appliance;

(d) adjustments of an appliance;

(e) removal of an appliance;

(3) Dental surgical procedures which are cosmetic only are not covered services even when proposed in conjunction with orthodontia.

R414-51-6. Limitations.

Orthodontia is not a Medicaid benefit for:

(1) cosmetic or esthetic reasons;

(2) treatment of any temporo-mandibular joint condition or dysfunction;

(3) conditions in which radiographic evidence of bone loss has been documented.

R414-51-7. Reimbursement.

(1) Fees for services for which the Department will pay optometrists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(3) The Department shall pay dentists in rural areas 120 percent of the Medicaid established dental fee. The Department shall pay dentist in urban areas 120 percent of the Medicaid established dental fee who agree in writing to treat 100 Medicaid eligible patients per year.

KEY: Medicaid, dental, orthodontia
July 1, 2009 26-1-5
Notice of Continuation April 30, 2013 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-52. Optometry Services.
R414-52-1. Introduction and Authority.

The Optometry Program provides optometry services to meet the optometry needs of Medicaid clients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.60.

R414-52-2. Definitions.

The definitions in the Utah Optometry Practice Act, Title 58, Chapter 16a, apply to this rule.

R414-52-3. Client Eligibility Requirements.

Optometry services are available to categorically and medically needy individuals, except that the provision of eyeglasses is available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

R414-52-4. Service Coverage.

(1) Optometry services include examination, evaluation, diagnosis and treatment of visual deficiency, removal of a foreign body, and the provision of eyeglasses. In addition, Medicaid medical services performed by physicians may also be performed by optometrists under the Utah Optometry Practice Act.

(2) The optometrist must document in the patient record that the eye examination is medically necessary.

R414-52-5. Reimbursement.

(1) Fees for services for which the Department will pay optometrists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

KEY: Medicaid, optometry
February 24, 2009 26-1-5
Notice of Continuation May 1, 2013 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Sections 26-1-5 and 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-303-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-303-3. Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, 2011 ed., which are incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect November 19, 2012, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect April 2, 2012, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts the disability determination requirements described in 42 CFR 435.541, 2011 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, 2011 ed., which are incorporated by reference, to decide if an individual is disabled. The Department notifies the eligibility agency of its disability decision, who then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-6.

(a) The individual may provide the eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The eligibility agency notifies the individual of the reconsideration decision. Thereafter, the individual may choose to pursue or abandon the fair hearing.

(5) If the eligibility agency denies an individual's Medicaid application because the Medicaid Disability Review Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect April 4, 2012, the eligibility agency shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect November 19, 2012, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect November 19, 2012, for a given year, or as subsequently authorized by Congress under the American Taxpayer Relief Act, Pub. L. No. 112 240, signed into law on January 2, 2013. The eligibility agency shall deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the eligibility agency shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The eligibility agency shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Medicaid for Low-Income Families and Children for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2011 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) in effect April 4, 2012, which are incorporated by reference.

(2) For unemployed two-parent households, the eligibility agency does not require the primary wage earner to have an employment history.

(3) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other requirements for Low-Income Family and Child Medicaid (LIFC), all the following applies to an application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in an LIFC household, the child must be included in the LIFC eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) $90 will be deducted from the monthly gross earned income for each employed person.

(iii) The $30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be $200.00 per child under age two, and $175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is $160.00 per child under age two, and $140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative's household.

(4) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(5) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(6) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(7) The eligibility agency imposes no suitable home requirement.

(8) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(9) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-5. 12-Month Transitional Family Medicaid.

The Department provides transitional Medicaid coverage in accordance with the provisions of Title XIX of the Social Security Act Section 1925 for households that lose eligibility for 1931 Family Medicaid as described in Section 1931(c)(2).

R414-303-6. Four-Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2011 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) and Section 1931(c)(2) in effect November 19, 2012, which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four-month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-7. Foster Care and Independent Foster Care Adolescents.

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children who meet the definition of a dependent child under the State Plan for Aid to Families

with Dependent Children in effect on July 16, 1996, is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

(3) The Department covers individuals who are 18 years old but not yet 21 years old as described in 1902(a)(10)(A)(ii)(XVII) of the Social Security Act. This coverage is the Independent Foster Care Adolescents program. The Department determines eligibility according to the following requirements.

(a) At the time the individual turns 18 years of age, the individual must be in the custody of the Division of Child and Family Services, or the Department of Human Services if the Division of Child and Family Services was the primary case manager, or a federally recognized Indian tribe, but not in the custody of the Division of Youth Corrections.

(b) Income and assets of the child are not counted to determine eligibility under the Independent Foster Care Adolescents program.

(c) Medicaid eligibility under this coverage group is not available for any month before July 1, 2006.

(d) When funds are available, an eligible independent foster care adolescent can receive Medicaid under this coverage group until he or she reaches 21 years of age, and through the end of that month.

R414-303-8. Subsidized Adoptions.

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

R414-303-9. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-10. Refugee Medicaid.

(1) The Department provides medical assistance to refugees in accordance with the provisions of 45 CFR 400.90 through 400.107 and 45 CFR, Part 401.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

(7) The Department provides medical assistance to Iraqi and Afghan Special Immigrants in the same manner as medical assistance provided to other refugees.

R414-303-11. Poverty-Level Pregnant Woman and Poverty-level Child Medicaid.

(1) The Department incorporates by reference Title XIX of the Social Security Act, Sections 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47) for pregnant women and children under age 19, 1902(e)(4) and (5) and 1902(l), in effect January 1, 2011 which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman, or a child under age 19, based on self-declaration that the pregnant woman, or the child under age 19, meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider has verified that she is pregnant and determines, based on preliminary information, that the woman:

(a) meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(c) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(6) The Department provides medical assistance in accordance with Section 1920A of the Social Security Act to children under age 19 during a period of presumptive eligibility if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) for a child under age 6, the declared household income does not exceed 133% of the federal poverty guideline applicable to the declared household size;

(c) for a child age 6 through 18, the declared household income does not exceed 100% of the federal poverty guideline applicable to the declared household size; and

(d) the child is not already covered on Medicaid or CHIP.

(7) No resource test applies to determine presumptive eligibility of a child.

(8) A child may receive medical assistance during only one period of presumptive eligibility in any six-month period.

(9) The Department elects to impose a resource standard on poverty-level child Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(10) The Department elects to provide Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(11) At the initial determination of eligibility for Poverty-level Pregnant Woman Medicaid, the eligibility agency determines the applicant's countable resources using SSI resource methodologies. Applicants for Poverty-level Pregnant Woman Medicaid whose countable resources exceed $5,000 must pay four percent of countable resources to the agency to receive Poverty-level Pregnant Woman Medicaid. The maximum payment amount is $3,367. The payment must be met with cash. The applicant cannot use any medical bills to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2011.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or

other reasons place the pregnant woman in a high risk category. To obtain this waiver of the resource payment, the woman must provide this information to the eligibility agency before the woman pays the resource payment so the agency can determine if she is in a high risk category.

(12) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. The mother can apply for Medicaid after the birth and if determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the Department determines if the infant is eligible under other Medicaid programs.

(13) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

(14) Children who meet the criteria under the Social Security Act, Section 1902(l)(1)(D) may qualify for the poverty-level child program through the month in which they turn 19. A child determined presumptively eligible may receive presumptive eligibility only through the applicable period or until the end of the month in which the child turns 19, whichever occurs first. The eligibility agency deems the parent's income and resources to the 18-year old to determine eligibility when the 18-year old lives in the parent's home. An 18-year old who does not live with a parent may apply on his own, in which case the agency does not deem income or resources from the parent.

R414-303-12. Pregnant Women Medicaid.

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

R414-303-13. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect April 4, 2012, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

KEY: income, coverage groups, independent foster care adolescent

April 17, 2013 26-18-3

Notice of Continuation January 23, 2013 26-1-5

R432. Health, Family Health and Preparedness, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.
R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and the licensing agency in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities and agencies regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by The Joint Commission (TJC), Accreditation Association for Ambulatory Health Care (AAAHC), Accreditation Commission for Health Care, Community Health Accreditation Program or the American Osteopathic Association's Health Facilities Accreditation Program (AOA/HFAP) in lieu of the licensing inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensing year of application.

(2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) accreditation certificate;

(b) Joint Commission Statement of Construction;

(c) survey reports and recommendations;

(d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) inspections,

(b) complaint investigations,

(c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:

(i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,

(ii) any facility or agency that does not have a current, valid accreditation certificate, or

(iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular inspections shall apply.

R432-3-4. Statement of Findings.

(1) The Department or its designee may inspect each facility or agency at least once during each year that a license has been granted, to determine compliance with standards and the applicable rules and regulations.

(2) Whenever the Department has reason to believe that a health facility or agency is in violation of Title 26, Chapter 21 or any of the rules promulgated by the Health Facility Committee, the Department shall serve a written Statement of Findings to the licensee or his designee within the following timeframe.

(a) Statements for Class I and III violations are served immediately.

(b) Statements for Class II violations are served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which presents imminent danger to patients or residents of the facility or agency or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a health facility or agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an expired license.

(4) The Department may cite a facility or agency with one or more rule or statute violations. If the Department finds that there are no violations, a letter shall be sent to the facility acknowledging the inspection findings.

(5) The Statement of Findings shall include:

(a) the statute or rule violated;

(b) a description of the violation;

(c) the facts which constitute the violation; and

(d) the classification of the violation.

R432-3-5. Plan of Correction.

(1) A health facility or agency shall submit within 14 calendar days of receipt of a Statement of Findings a Plan of Correction outlining the following:

(a) how the required corrections shall be accomplished;

(b) who is the responsible person to monitor the correction is accomplished; and

(c) the date the facility or agency will correct the violation.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the Plan of Correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility or agency of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. If the Department requests a revised Plan of Correction, the facility or agency shall submit the revised Plan of Correction within 14 days of receipt of the Department request.

(4) If the facility or agency corrects the violation prior to submitting the Plan of Correction, the facility or agency shall submit a report of correction.

(5) If violations remain uncorrected after the time specified for completion in the Plan of Correction or if the facility or agency fails to submit a Plan of Correction as specified, the Department shall notify the facility or agency.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions outlined in Rule R432-30, Adjudicative Proceedings.

(7) If a licensed or unlicensed health facility or agency is served with a Statement of Findings citing a Class I violation,

the facility or agency shall correct the situation, condition, or practice constituting the Class I violation immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(a) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed -upon correction period to determine correction of Class I violations.

(b) If a health facility or agency fails to correct a Class I violation as outlined in the accepted Plan of Correction, the Department shall pursue sanctions or penalties through a formal adjudicative proceeding as outlined in Rule R432-30.

(8) A facility or agency served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time-frame approved by the Department which does not exceed 60 days unless justification is provided in the accepted Plan of Correction.

(9) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility or agency if a facility or agency is cited with a Class II violation and fails to take required corrective action as outlined in Rule R432-30.

(10) The Department shall determine which sanction to impose by considering the following:

(a) the gravity of the violation;

(b) the effort exhibited by the licensee to correct violations;

(c) previous facility or agency violations; and

(d) other relevant facts.

(11) The Department shall serve a facility or agency with a Statement of Findings for a Class III violation. A facility of agency cited for a Class III violation must file a Request for Agency Action/License Application form and pay the required licensing fee within 14 days of the receipt of the Class III Statement of Findings.

(a) The Statement of Findings may include the names of individuals residing in the facility who require services outside the scope of the proposed licensing category.

(b) The facility shall arrange for all individuals to be relocated if the facility is unable to meet the individuals' needs within the scope of the proposed license category.

(c) If the facility or facility fails to submit the Request for Agency Action/License Application as specified, the Department shall issue a written Notice of Agency Action ordering closure of the facility or agency.

(d) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility or agency under an emergency adjudicative proceeding, as outlined in Rule R432-30.

R432-3-6. Sanction Action on License.

(1) The Department may initiate an action against a health facility or agency pursuant to Section 26-21-11. That action may include the following sanctions:

(a) denial or revocation of a license if the facility or agency fails to comply with the rules established by the Committee, or demonstrates conduct adverse to the public health, morals, welfare, and safety of the people of the state;

(b) restriction or prohibition on admissions to a health facility or agency for:

(i) any Class I deficiency,

(ii) Class II deficiencies that indicate a pattern of care and have resulted in the substandard quality of care of patients,

(iii) repeat Class I or II deficiencies that demonstrate continuous noncompliance or chronic noncompliance with the rules, or

(iv) permitting, aiding, or abetting the commission of any illegal act in the facility or agency;

(c) distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensing rules or illegal conduct permitted by the facility or agency and the Department action taken;

(d) placement of Department employees or Department-approved individuals as monitors in the facility or agency until such time as corrective action is completed or the facility or agency is closed;

(e) assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility or agency;

(f) during the correction period, placement of a temporary manager to ensure the health and safety of the patients; or

(g) issuance of a civil money penalty pursuant to UCA 26-23-6, not to exceed the sum of $10,000 per violation.

(2) If the Department imposes a restriction or prohibition on admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee.

(a) The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency.

(b) The Department shall impose the restriction or prohibition if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on admissions within the previous 24 month period; or

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) circumstances in the facility or agency indicate actual harm, a pattern of harm, or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or agency to post a written notice on all public entry doors.

R432-3-7. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed health facility or agency when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in section 63-46b-20 shall be followed.

(3) If the Department determines to close a facility or agency, it shall serve an order that the facility or agency is ordered closed as of a given date. The order shall:

(a) state the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

(c) advise as to the commencement of a formal adjudicative proceeding in accordance with this rule.

(4) The Department may maintain an action in the name of the state for injunction or other process against the health facility or agency which disobeys a closure order as provided in section 26-21-15.

(5) The Department may assist in relocating patients or residents to another licensed facility or agency.

(6) The Department may pursue other lesser sanctions in lieu of the closure order.

(7) The Department may, in addition to emergency closure, seek criminal penalties.

R432-3-8. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to

renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility or agency licensing category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the Statement of Findings two prior violations and given the licensee or facility administrator a written warning notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

KEY: health care facilities

April 24, 2013	**26-21-5**
Notice of Continuation December 24, 2008	**26-21-14 through 26-21-16**

R495. Human Services, Administration.
R495-881. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation.
R495-881-1. Authority and Purpose.

(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Human Services.

(2) This rule is authorized by Section 62A-1-111.

R495-881-2. Definitions.

As used in this rule:

(1) "Covered entity" means a program within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.

(2) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1997 and its implementing regulations.

(3) "Individual" means a natural person. In the case of an individual without legal capacity or a deceased person, the personal representative of the individual.

R495-881-3. General Compliance.

(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

(2) Covered entities shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

R495-881-4. Changes to Rule.

The Department reserves the right to alter this rule and its notices of privacy practices required by HIPAA.

R495-881-5. Sanctions, Retaliation.

(1) An employee of a covered entity may be disciplined for failure to comply with the HIPAA requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by HIPAA or for opposing in good faith any act or practice made unlawful by HIPAA.

R495-881-6. Waiver of Rights Prohibited.

A covered entity may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

R495-881-7. Complaints.

(1) An individual may seek a review of a covered entity's policies and procedures or its compliance with such policies and procedures through informal contact with the covered entity.

(2) An individual may file a formal complaint concerning a covered entity's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing a complaint with the Office of the Executive Director of the Department requesting an agency action meeting the requirements of the Utah Administrative Procedures Act or with the Office of Civil Rights, U.S. Department of Health and Human Services.

R495-881-8. Right to Request Privacy Protection.

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

R495-881-9. Individual Access to Protected Health Information.

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered entity.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

R495-881-10. Amendment of Protected Health Information.

(1) An individual may request an amendment to the protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, the time frames for action by the covered entity, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

R495-881-11. Accounting for Disclosures.

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered entity.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

KEY: HIPAA, privacy
July 23, 2008 **62A-1-111**
Notice of Continuation April 15, 2013

R510. Human Services, Aging and Adult Services.
R510-104. Nutrition Programs for the Elderly (NPE).
R510-104-1. Purpose.

This Rule explains and clarifies the senior nutrition programs administered in Utah.

R510-104-2. Authority.

This Rule is authorized by 62A-3-104; 42 USC Section 3001

R510-104-3. Nutrition Services Principles.

(1) The Division shall develop a comprehensive and coordinated nutrition service system statewide. The Division shall encourage and assist the AAAs in utilization of resources to develop greater capacity in their nutrition programs and services. The Division will approve a nutrition screening tool that will be used to identify nutritional risk or malnutrition. All seniors participating in the Nutrition Program For The Elderly, Congregate and Home Delivered Meals, are strongly encouraged to complete the nutrition screen. If an individual does not want to fill out the screening form, he or she will not be denied a meal. A nutrition screen may be required by a AAA for a client to receive liquid meals.

(2) The Division shall monitor, coordinate, and assist in the planning of nutritional services with the advice of a registered dietitian or an individual with comparable expertise. The nutrition service system shall provide older Utahns, particularly those in the greatest economic and social need categories, with particular attention to low-income and low-income minorities, access and outreach to nutrition services, nutrition education and nutritionally sound meals, to promote better health through improved diet.

(3) Policy and Procedures approved by the Utah State Board of Aging and Adult Services shall be used by the Division and its contractors/grantees in the conduct of all functions and responsibilities required in carrying out services and funding categories of the Title III Part C Nutrition Program, including Congregate Meals (Part C-1), Home-Delivered Meals (Part C-2), Nutrition Education and Nutrition Outreach, and the Nutrition Services Incentive Program (NSIP).

R510-104-4. Definitions.

(1) Congregate Meals -- Meals provided five or more days a week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary by regulation) and a lesser frequency is approved by the State agency), provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide; which shall be provided in congregate settings, including adult day care facilities and multigenerational meal sites; and which may include nutrition education services and other appropriate nutrition services for older individuals.

(2) NSIP -- Nutrition Services Incentive Program. The NSIP Program authorizes cash payments to State Units on Aging (SUA) as a proportional share of the Federal fiscal year allocation. The allocation is based on the number of meals served by a single SUA in the previous year in proportion to the total number of meals served by all SUAs that year. Meals counted for purposes of NSIP reporting are those that satisfy the requirements of Title III-C of the OAA.

(3) Provisional Meals -- Meals delivered to a congregate meals participant who is unable to personally visit the congregate meals site for a limited period of time (to be determined by the AAA). The AAA has the discretion to determine what circumstances would make provisional meals appropriate.

(4) NPE -- Nutrition Programs for the Elderly. The term primarily refers to Congregate Meals and Meals on wheels which utilize state and federal funding to provide services to seniors, although Food Stamps may also be considered as a NPE.

(5) Division -- Utah State Division of Aging and Adult Services.

(6) AAA -- Area Agency on Aging.

(7) Dietary Guidelines for Americans -- The "Dietary Guidelines for Americans" has been published jointly every 5 years since 1980 by the Department of Health and Human Services (HHS) and the Department of Agriculture (USDA). The Guidelines provide authoritative advice for people two years and older about how good dietary habits can promote health and reduce risk for major chronic diseases. They serve as the basis for Federal food and nutrition education programs. The Guidelines also clarify the Daily Reference Intake (DRI), which replaces the Recommended Daily Amounts (RDA) previously used to determine the nutritional values of the meals served under the nutrition programs. The complete document can be accessed at http://www.health.gov/dietaryguidelines/dga2005/document/default.htm

(8) Modified diets -- Now referred to as Medical Nutritional Therapy by the American Dietician Association, this refers to meals that have been altered to make them compatible with a particular client's nutritional needs. Examples include limiting sodium for a client with high blood pressure or restructuring the portions or components of a meal to accommodate a client with diabetes.

(9) NAPIS -- National Aging Program Information Systems. This system allows the Utah Division of Aging and Adult Services to report the services provided under Titles III and VII of the Older Americans Act. RTZ's GetCare system is the vehicle the Division uses to interface with the federal NAPIS system.

(10) Nutrition Case Manager -- the AAA staff person who evaluates a potential client's situation and recommends an appropriate nutrition plan (i.e., Meals on Wheels), as well as other services where appropriate.

(11) OAA -- The Older American's Act. Originally signed into law by President Lyndon B. Johnson the act created the Administration on Aging and authorizes grants to States for community planning and services programs, as well as for research, demonstration and training projects in the field of aging. Later amendments to the Act added grants to Area Agencies on Aging for local needs identification, planning, and funding of services, including but not limited to nutrition programs in the community as well as for those who are homebound; programs which serve Native American elders; services targeted at low-income minority elders; health promotion and disease prevention activities; in-home services for frail elders, and those services which protect the rights of older persons such as the long term care ombudsman program.

R510-104-5. General Provisions.

(1) Nutritional Requirements:

(a) Food Requirements: AAAs shall ensure that the meals provided through their nutrition projects comply with the DRI Guidelines for Americans. Compliance shall be documented for each meal served by the nutrition provider.

(i) Handbook 8 of USDA (located at http://www.nal.usda.gov/ref/USDApubs/aghandbk.htm#sortnbr)

(ii) Computer analysis based upon an acceptable software program approved by the Division.

(iii) Computation of food values for portions of food commonly used.

(b) Menu Cycles and Analysis:

(i) Nutrition providers shall send an approved copy of the menus to be used to the appropriate nutrition site(s) and to the AAA.

(c) A registered dietitian and/or nutritionist shall sign off on the menus and recipes used under the nutrition programs to ensure meals served meet DRI guidelines.) Any substitutions (deviations) from the approved menu(s) shall be documented and reported by the nutrition project director.

(ii) Service providers contracting with a third party shall stipulate in the contract that menus must be received by the service provider at least one week prior to use for analysis and approval.

(iii) Any substitutions to the original menus must be documented and kept on file. For audit purposes, menus shall be maintained for a minimum of 3 years, or until disposition is authorized by the grantor agency.

(d) Modified Diets:

(i) Modified diets shall be available to program participants. Each project will provide modified menus where the AAA director feels they are feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. The AAA shall be responsible for the method of obtaining orders for modified diets, maintaining such orders on file and reviewing them.

(e) Utensils for the Blind and Disabled: Upon request, the AAA may provide the appropriate food containers and utensils for the blind and the disabled. The provider is required to submit nutrition program data to the National Aging Program Information System (NAPIS).

(f) A cold "sack lunch" that meets the DRI requirements may be offered to eligible participants.

(g) A written copy of the appeal process shall be made available to those denied this service.

R510-104-6. Eligibility for Nutrition and Nutrition Support Services.

(1) All persons aged 60 and older and their spouses, regardless of his/her age, are eligible for OAA nutrition services. If sufficient resources are not available to serve all eligible individuals who request a service, the AAA shall ensure that preference is given to those of greatest social or economic need, with particular attention to low-income, limited English speaking individuals and low-income minorities.

(2) Other Individuals who may receive congregate and home-delivered meals at the election of the AAA include those listed below. These individuals do not need to pay for the meal, but are encouraged to make the recommended donation as a qualified senior would:

(a) Individuals with disabilities (who has not attained the age of 60), if they reside in a housing facility primarily occupied by elderly persons that has a congregate meal site funded by the OAA on the premises.

(b) Clients of Home and Community-Based Alternatives program who are under 60 may be allowed to participate in the nutrition program as capacity allows. To be eligible to receive meals through nutrition programs, the client's case manager must include nutrition services in the care plan. If the participant is under 60, the Alternatives program shall pay the actual cost of the meal as determined by the AAA, rather than the suggested donation.

(c) Individuals with disabilities who reside at home with and accompany to a congregate meal site an older individual who may be eligible under the Act.

(d) Volunteers who are specifically assist with the nutrition program may be given a meal regardless of age.

R510-104-7. Providers Selection.

(1) The AAA shall make awards for congregate and home-delivered nutrition services to providers that furnish either or both types of service. Each AAA shall assure that each service provider selected meets all applicable Federal, State and Local regulations.

(2) Each AAA, when feasible, shall give preference in making awards for home-delivered meal services to providers that meet the following:

(a) Organizations that have demonstrated an ability to provide home-delivered meals efficiently and reasonably, andthat furnish assurances to the AAA that they will maintain efforts to solicit voluntary support and that OAA funds made available will not be used to supplant funds from non-federal sources.

(b) Food service certification in applied food service sanitation by nationally recognized industry programs and approved by the Utah State Department of Health, shall be required for one person per shift where food is prepared and cooked for NPE meals.

(3) Each AAA shall provide a mechanism that will assure the review of need for home-delivered meals for absent participants at the Congregate Sites. Each AAA shall develop a policy, to be reviewed and approved by DAAS regarding regular attendees who cannot attend the congregate site due to illness or other reasons, which determines whether and how often a client may receive provisional meals delivered to them from the congregate site by a spouse, friend or volunteer. If provisional meals are needed, AAA staff must document the client's needs and should consider the appropriateness of encouraging the client to participate in the home delivered meal program.

R510-104-8. Additional Meal Policy.

(1) Nutrition providers may serve a second meal or third meal if planned as an objective in the Area Plan. When two meals are served per day, they shall provide 66 2/3% of the DRI. When three meals are served per day, they shall provide 100% of the DRI. Provision of more than one meal qualifies for NSIP reimbursement if each meal meets the 33 1/3% DRI. Second helpings of the same meal that do not constitute a complete meal (i.e., a second serving of mashed potatoes) do not qualify for NSIP reimbursement. A second complete meal complying with the DRI, provided to a senior as a second meal, does qualify for NSIP reimbursement.

(2) To qualify second meals in the local meal county reports for USDA reimbursement, AAAs will be allowed to serve up to 1.5% of the total meals per quarter in second meals without formally developing a local second meal policy. If second meals claimed in the local meal count reports are equal to or greater than 1.5% of total first meals per quarter, a second meal policy shall be developed by each local AAA for USDA reimbursement.

(3) Nutrition services providers may serve a second meal to Senior Citizens who have been identified through nutrition screening to be at nutritional risk and/or socially or economically in need. The AAA shall have written program objectives which are specific, verifiable, and achievable for nutrition service provider(s), including the number and frequency of meals to be served at each designated congregates site or center, and to individual recipients in the home delivered meal program, if providing more than 1.5% of total meals as second meals.

(a) Second meals should be packaged so that the food will more likely be kept at proper storage temperatures for a reasonable length of time.

(b) The participants who receive a second meal shall be given the opportunity to make a second confidential contribution for that meal.

(c) Records will be maintained by the nutrition provider(s) on all additional meals served to eligible participants.

R510-104-9. Emergency Meals.

(1) AAAs shall develop written procedures to be followed

by the service providers for the provision of emergency meals in the event of weather related emergencies, disasters, or situations which may interrupt meal service or the transportation of participants to the nutrition site. Through the intake, assessment, and re-evaluation process, clients will be identified who do not have food within their home, or through nearby support networks to provide the nutrition they need to last through short term emergencies.

R510-104-10. Outreach.

(1) Each nutrition provider shall establish outreach activities which encourage the maximum number of eligible clients to participate. Nutrition Education: Each project shall provide nutrition education on at least a semi-annual basis.

R510-104-11. Medical Meals.

(1) In situations where nutritional considerations make solid foods inappropriate, the need for nutrient supplements to include medical meals (meeting the required RDI Guidelines) may be part of medical nutrition therapy recommended by a registered dietitian, registered nurse or physician, primarily when the participant cannot tolerate or digest regular meals.

(2) Only seniors are eligible for medical meals purchased through the Nutrition Program for the Elderly (NPE) funding. Exceptions can be made for Alternatives clients under 60. Additionally, AAAs always have the discretion to use county dollars in any way they see fit.

(3) A medical or secondary meal shall only be offered in place of regular food as the first meal. In order to receive medical meals through the Nutrition Programs for the Elderly (NPS), the following requirements must be met:

(i) A demographic questionnaire must be completed (for the AAA records).

(ii) A physician must issue a prescription, or a clinically based assessment must be completed by a dietician or nurse.

(4) A medical meal distributed through the AAAs' NPE Programs must meet the 33 1/3 DRI nutrient requirements. If the medical meal is picked up by the client or client representative at a senior center, the meal will count as a congregate meal (C1) and if the medical meal is delivered to the client's home by the AAA staff, the meal will be considered a home delivered meal (C2).

(5) The Participant may not be provided more than a one month supply of medical liquid supplement at one time.

(6) A confidential contribution system shall be in place with a suggested donation in order to qualify the medical meal for the USDA cash-in-lieu reimbursement.

R510-104-12. Food Service Management.

(1) Food Service Management: All AAAs shall ensure the following:

(a) Each meal project shall comply with applicable State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in storage, preparation, service, and delivery of meals to older adults. Compliance with current Serv-Safe guidelines (http://www.servsafe.com/) ensures proper compliance to the State and local requirements. All food used by the nutrition service provider(s) must meet standards of quality, sanitation, and safety applying to foods that are processed commercially and purchased by the project. No food prepared or canned in a home or any other non-licensed facility may be used in meals provided by a project financed through the nutrition service provider(s) award.

(b) Inventories: Each AAA shall require that accurate inventory records for consumable goods be maintained for four years by nutrition projects funded in whole or in part by the Older Americans Act funds. Either the periodic or perpetual system of inventory shall be acceptable, if conducted consistent with generally accepted inventory control principles.

(c) Training: The provider shall plan and provide training and supervision in sanitation, food preparation, and portion control by qualified personnel for all paid and volunteer staff who prepare, handle and serve food. Each of these individuals must have a current Food Handlers Permit.

(d) Refrigerated Storage: The refrigeration cooling period for hot food brought below 40 degrees Fahrenheit shall not exceed 4 hours.

(i) All prepared foods that are frozen in a nutrition project kitchen shall be chilled in a rapid chills system which reduces the temperature of foods to 70 degrees within 2 hours and shall be cooled to an internal product temperature of 41 degrees F or below within the following 2 hours.

(e) Frozen Food Requirements: All packaged frozen meals and freezing methods used to freeze meals utilized by the nutrition project, must meet the requirements of the State of Utah Health Department regulations.

(f) Hot Food Requirements:

(i) Beef products including hamburger shall be cooked to an internal temperature of 155 degrees F, poultry shall be cooked to an internal temperature of 165 degrees F and pork shall be cooked to an internal temperature of 165 degrees F.

(ii) All hot foods shall be maintained at 140 degrees F or above, from the time of final food preparation to completion of service.

(g) Cold Food Requirements: Cold foods shall be maintained at 41 degrees F or below from time of initial service to completion of service.

(h) The nutrition project shall make temperature checks of all prepared, received and transported meals.

(i) Staffing: The nutrition service provider shall:

(i) Be encouraged by the AAA to give preference to employing those qualified persons age sixty (60) and over, including those of greatest economic or social need;

(ii) Designate a person responsible for the conduct of the project who has the necessary authority to conduct day-to-day management functions of the provider;

(iii) Use a registered dietitian or nutritionist to provide necessary nutrition services.

(j) If serving a meal to staff under 60 deprives elderly target population individuals with reservations from securing a meal, other arrangements should be made for staff.

R510-104-13. Contribution Policy.

(1) The actual cost, as defined by the AAA and reported to the State, of a congregate meal shall be posted at the nutrition site. Suggested contribution and actual cost shall be posted in a prominent conspicuous location.

(2) Each eligible participant shall have an opportunity to voluntarily and anonymously contribute toward the cost of a provided meal service.

(3) Persons under the age of 60 shall pay the full cost of the meal, which shall be collected and accounted for separately. Exceptions can be made for the individuals previously listed (spouses of seniors regardless of age, individuals with disabilities who reside with seniors, individuals providing volunteer service, and underage individuals residing in senior housing sites in which congregate meals are served) who are encouraged to make the standard meal donation.

(4) Each AAA shall establish and implement procedures which will protect the privacy of the client's decision to contribute or not contribute toward the meal service rendered.

(a) There shall be locked contribution boxes in a place where anonymous donations can be made, which shall not be monitored for contributions, in order to assure the confidentiality of the donation.

(5) Participant contributions shall be counted by two persons, and both individuals shall sign a form attesting to the correct count. A copy of such signed documentation shall be

kept on file.

(6) Under no circumstances may an eligible client be denied service(s) by a provider who received funds from the AAA (for that service) because of the client's decision not to contribute for services rendered.

R510-104-14. Congregate Meals.

Requirements for Congregate Meal Providers:

(1) Each AAA and AAA Advisory Council, or local equivalent, shall determine the number of congregate sites to be established and their days of operation.

(2) Local AAA's must provide congregate meals a minimum of five days per week except in a rural area where such frequency is not feasible and a lesser frequency has been approved by the division).

(3) Leftover Food:

(a) All food transported to sites which becomes "leftover," except unopened prepackaged food, must be properly disposed of at the meal site or the main food preparation site in compliance with State Health Department regulations.

(b) AAAs shall develop policies and procedures to minimize leftover meals. Use of a reservation system for participation in the congregate meal program is recommended.

(c) Leftovers shall be offered to all participants as second helpings at those congregate settings which do not have on-site methods to preserve leftover food to meet the nutritional standards for later consumption which are approved by the State Health Department). If a complete meal is provided to a client as a second meal, the client shall be given an opportunity to make another confidential donation.

(d) Each nutrition site, in a location that is easily visible to patrons, shall have a disclaimer which states: "For Your Safety: Food removed from the center must be kept hot or refrigerated promptly. We cannot be responsible for illness or problems caused by improperly handled food."

(e) No food shall be taken from the site by staff.

(f) Leftover foods at on-site cooking facilities shall be properly refrigerated and incorporated into subsequent meals whenever possible.

(4) Food being served shall be protected from consumer contamination by the use of packaging or by the use of an easily cleanable counter, serving line, or salad bar protector devices, display cases, or by other means which minimize human contact with the food being served. Enough hot or cold food serving containers shall be available to maintain the required temperature of potentially hazardous food.

R510-104-15. Home Delivered Meals.

All individuals requesting home-delivered meals shall be assessed and only those individuals who have been determined to be homebound, as defined below, shall be eligible for a home-delivered meal.

(1) Homebound Status:

(a) A person shall be determined to be homebound if he/she is unable to leave home without assistance because of a disabling physical, emotional or environmental condition.

(b) Homebound status shall be documented. The Division shall approve the method of assessment to ensure standard measurable criteria.

(c) Written documentation of eligibility shall be maintained by the AAA.

(d) Homebound status shall be reviewed or re-evaluated on a regular basis, but not less frequently than annually.

(i) A waiver of the full annual assessment may be approved by the AAA director or designee. A written statement of waiver shall be placed in the client's file and shall be reviewed annually.

(e) Top priority may be given to emergency requests. Home-delivered meals for an emergency may start as soon as possible after the determination of urgent need has been made. A full assessment will be made within 14 calendar days from the date of request to determine continued eligibility.

(2) Requirements for Home-Delivered Meal Providers:

(a) Home-delivered meal service within a Planning and Service Area (PSA) shall be available 5 or more days per week.

(b) Division approval must be obtained for Home-delivered meal plans that provide meals 4 days/week or less in rural areas.

(3) A home-delivered meal, intended for a meal client that cannot be delivered, may be given to another home-delivered meal client as a second meal. This second meal would qualify for NSIP reimbursement, provided the recipient meets the eligibility criteria.

R510-104-16. Financial Policies.

Project income generated by Title III-C can only be used to:

(1) expand the number of meals provided or to facilitate access to such meals (transportation and outreach);

(2) integrate systematic nutrition screening for nutrition/malnutrition and food insecurity; or

(3) to provide other supportive services directly related to nutrition services, such as outreach, information and referral, transportation, access to grocery shopping, help with food stamp procurement, social activities in conjunction with a meal, and nutrition education.

R510-104-17. Restriction on Use of Funds.

(1) Program income generated by OAA Title III Part C-1 and Part C-2 may be used as the additional alternative (to expand the number of meals provided, or to facilitate access to such meals or to provide other supportive services directly related to expanding nutrition services) or the cost sharing alternatives as stated in 45 CFR 92.259(g)(2) (to match federal and/or state funds) or, a combination of the two alternatives.

(2) To defray program costs, a AAA which serves as the nutrition provider may also perform Nutrition Services for other groups and programs outside the parameters of the Nutrition Program for the Elderly under the OAA, providing such services will not interfere with the project or programs for which the contract was originally granted. These extra nutrition activities shall be managed in a manner that does not impede the preparation or delivery of nutrition services to the elderly, and shall charge the full cost of preparation and delivery of the nutrition services as set forth by the provider. When persons 60 years of age and older participate in these "special events," they assume the identity of the activity and are obligated to pay the requested fee for participation. This shall not be confused with the donation policy of the Title III Nutrition Programs. A nutrition provider who contracts with a AAA is obviously free to serve other clients as it wishes.

R510-104-18. Nutrition Services Incentive Program (NSIP) Participation (Commodities and Cash-In-Lieu of Commodities).

Currently, the NSIP program is used by the federal government to provide reimbursement for meals served under nutrition programs that meet the reporting criteria for federally funded meals. The NSIP reimbursements have, for the most part, replaced the U.S. Department of Agriculture (USDA) practice of presenting nutrition service providers with either food commodities or cash-in-lieu of commodities to supplement the nutrition providers' resources. However, the USDA reserves the right to provide cash or commodities in the future.

(1) Donated Food Standard Agreement: The AAA or nutrition service provider may enter into a written agreement with the Department of Human Services Federal Food Program of the State of Utah and shall follow all procedures of the

"Agreement for Commodities Donated by the U.S. Department of Agriculture."

(2) USDA cash-in-lieu of commodities payments or revenue earned, depending on whether the accounting for the USDA program is on a cash or accrual basis, shall be used to offset the cost of raw food and the cost of purchased meals.

(3) Cash-In-Lieu of Commodities:

(a) AAAs shall promptly disburse all USDA cash-in-lieu of commodities to nutrition providers in their planning and service area that are funded with Title III Part C-1 and Part C-2 funds.

(b) AAAs shall ensure that payments received by providers in lieu of commodities shall be used solely for the purchase of:

(i) United States agricultural commodities and other foods produced in the United States; or

(ii) Meals furnished to them under contractual arrangements with food service management companies, caterers, restaurants, or institutions, have provided that each meal contains United States produce commodities or foods at least equal in value to the per meal cash payment which the nutrition service providers have received.

(4) Monitoring, Withholding or Recovering Cash Payments:

(a) The Division and the AAAs shall monitor and assess use of payments received in lieu of commodities. Such monitoring shall include periodic on site examination of all pertinent records maintained by service providers, as well as, all such records maintained by suppliers of meals purchased under contractual arrangements.

(b) The Division will withhold or recover cash payments in lieu of commodities from an AAA if it determines, through a review of such AAA's reports, program monitoring, financial review or audit, that the AAA has failed to comply with the provisions of this section, or otherwise have failed to adequately document the basis for payments received during the fiscal year.

(c) AAAs which do not expend the Cash-In-Lieu within a maximum of two quarters after it has been allocated by the Division shall be evaluated for need and other available resources at the local AAA. Their rate of entitlement may be reduced in succeeding allocation periods.

(5) USDA Documentation:

(a) AAAs shall ensure that the cost of the U.S. grown food purchased during the project year is at least equal to the amount of the USDA reimbursement under the cash in lieu of commodities program. This documentation shall be based on paid invoices.

(b) In the case of meals served under contractual arrangements with food service management companies, caterers, restaurants or institutions, copies of menus and invoices of food purchases that demonstrate that each meal served contained United States produced commodities or food at least equal in value to the per meal cash payments, constitutes adequate documentation.

R510-104-19. Transfer of Funds.

Statewide transfers between OAA Title III B and C awards shall not exceed 20%. Transfers between Part C-1 and Part C-2 awards shall not exceed 40% of any one funding category unless the Division requests and receives written approval from the U.S. Department of Health and Human Services Assistant Secretary for Aging.

R510-104-20. Documentation and Record Keeping Requirements.

(1) AAAs shall document and maintain all records and forms required to meet state and/or federal requires of the OAA and the USDA (United States Department of Agriculture) for three years.

(2) The number of participants participating in Title III C-1, C-1 and their names shall be kept on file in the Planning and Service Area for three years.

(3) AAAs shall work with the Division to complete the annual federal NAPIS (see definitions) reporting requirements by use of the current data management system or by other means as agreed to by the Division.

KEY: elderly, nutrition, home-delivered meals, congregate meals

April 15, 2013 62A-3-104

Notice of Continuation October 8, 2009 42 USC Section 3001

R512. Human Services, Child and Family Services.
R512-100. In-Home Services.
R512-100-1. Purpose and Authority.

(1) The purpose of In-Home Services is to provide services to allow children at risk to remain safely in their own home, and provide services to facilitate the return home of children who have been placed in the custody of the Division of Child and Family Services (Child and Family Services).

(2) In-Home Services are designed to maintain children safely in their homes by helping families alleviate crises. Child and Family Services provides assistance for developing skills and educational training in the family home and for connecting the family to community services and resources to meet the family's needs.

(3) The components of In-Home Services interventions include:

(a) Case management,

(b) Skills development and family education,

(c) Counseling/therapy,

(d) Home visits,

(e) Private conversation with one or more of the children if the children have been substantiated as a victim of abuse or neglect.

(4) Pursuant to Sections 62A-4a-105, 62A-4a-201, and 62A-4a-202, Child and Family Services is authorized to provide In-Home Services.

(4) This rule is authorized by Section 62A-4a-102.

R512-100-2. Definitions.

(1) "Child and Family Assessment" defines the child and family's strengths and needs and provides the framework from which to access appropriate services, evaluate progress toward goals, and adjust plans and interventions accordingly.

(2) "Child and Family Plan" is based on the assessment of the child and family's strengths and needs which will enable them to work toward their goals.

(3) "Child and Family Team" is a group that meets as often as needed and works to support the family and assist them in meeting their needs. This may include the referent or other concerned individuals identified by the family as support persons.

R512-100-3. Qualifications.

(1) In-Home Services may be provided to families under the following conditions:

(a) A specific threat of harm to the child is present or is likely to be present and without intervention the protective capacities of the caregiver cannot safely manage the threat of harm.

(b) Abuse or neglect has occurred but the child is able to remain safely in the home.

(c) A child who is being reunited with their family and has been in the temporary custody of Child and Family Services and/or an out-of-home placement with a kinship caregiver.

(d) An adoptive placement may be at risk of disruption or dissolution and services are needed to maintain the child in the adoptive home.

(2) A family may not be accepted for In-Home Services under the following conditions:

(a) A family has the ability to access resources, supports, and services on their own.

(b) There are no specific threats of harm to the child that are not managed by the protective capacities of the family.

(3) In-Home Services may be voluntary or court ordered.

(a) Voluntary services are preferred over court ordered services.

(b) A petition may be filed for court-ordered protective supervision of the family.

(4) In-Home Services are available in all geographic regions of the state.

R512-100-5. Service Delivery.

(1) Child and Family Team:

(a) With the family's assistance, a Child and Family Team shall be established for each family receiving In-Home Services.

(b) At a minimum, the Child and Family Team shall assist with assessment, Child and Family Plan development, and selection of permanency goals; oversee progress toward completion of the Child and Family Plan; and provide input into adaptations to the Child and Family Plan.

(2) Child and Family Assessment:

(a) A written assessment that evaluates the child and family's strengths and underlying needs is completed for each family working with Child and Family Services.

(3) Child and Family Plan:

(a) Based upon the Child and Family Assessment, each child and family receiving In-Home Services shall have a written Child and Family Plan in accordance with Section 62A-4a-205.

(b) Members of the Child and Family Team shall assist in creating the Child and Family Plan.

(c) A copy of the completed Child and Family Plan shall be provided to the parent or guardian. If In-Home Services are court ordered, a copy of the Child and Family Plan will be provided to the court, Assistant Attorney General, Guardian ad Litem, and legal counsel for the parent or guardian.

(4) Permanency Goals:

(a) All children receiving In-Home Services shall have a primary permanency goal and a concurrent permanency goal identified by the Child and Family Team.

(b) For court-ordered In-Home Services, both primary and concurrent permanency goals shall be submitted to the court for approval.

(5) Duration of Services:

(a) In-Home Services shall continue until the identified threats of harm have been managed by decreasing the child vulnerabilities and/or increasing the protective capacities of the family, or when the child can no longer safely remain in the home.

KEY: child welfare

October 13, 2010	**62A-4a-102**
Notice of Continuation April 8, 2013	**62A-4a-105**
	62A-4a-201
	62A-4a-202

R512. Human Services, Child and Family Services.
R512-200. Child Protective Services, Intake Services.
R512-200-1. Purpose and Authority.

(1) The purpose of Intake Services is:

(a) To receive and evaluate whether an investigation is needed;

(b) Assign for investigation referrals of suspected child abuse, neglect, and dependency.

(2) Pursuant to Section 62A-4a-105 and 62A-4a-403, Child and Family Services is authorized to provide CPS.

(3) This rule is authorized by Section 62A-4a-102.

R512-200-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "CPS" means Child Protective Services.

(c) "SAFE" means Child and Family Services' Child Welfare Management Information System.

R512-200-3. Scope of Services.

(1) Qualification for Services.

(a) Child and Family Services will maintain a system for receiving referrals or reports about child abuse, neglect, or dependency. The system shall supply Child and Family Services CPS workers with a complete previous Child and Family Services history for each child, including siblings, foster care episodes, all reports of abuse, neglect, or dependency, treatment plans, and casework deadlines.

(2) Priority of the referral.

(a) Child and Family Services establishes CPS priority time frames as follows:

(i) A Priority 1 response shall be assigned when the child referred is in need of immediate protection. Intake will begin to collect information immediately after the completion of the initial contact from the referent. As soon as possible thereafter, Intake will obtain additional information, staff the referral to determine the priority, notify law enforcement, and assign to the Child and Family Services CPS worker. Intake shall provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker has as a standard of 60 minutes from the time Intake notifies the worker to initiate efforts to make face-to-face contact with an alleged victim. For a Priority 1R (rural) referral, a Child and Family Services CPS worker has, as a standard, three hours to initiate efforts to make face-to-face contact if the alleged victim is more than 40 miles from the investigator who is assigned to make the face-to-face contact.

(ii) A Priority 2 response shall be assigned when physical evidence is at risk of being lost or the child is at risk of further abuse, neglect, or dependency, but the child does not have immediate protection and safety needs, as determined by the Intake checklist. Intake will begin to collect information as soon as possible after the completion of the initial contact from the referent. As soon as possible Intake will obtain additional information, staff the referral to determine the priority, assign the referral to the Child and Family Services CPS worker, and notify law enforcement. Intake shall give verbal notification to the assigned Child and Family Services CPS worker. Intake shall also provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker has, as a standard, 24 hours from the time Intake notifies the worker to initiate efforts to make face-to-face contact with the alleged victim. Notification of a Priority 2 referral received after normal working hours (8:00 a.m. through 5:00 p.m.) shall occur as early as possible following morning.

(iii) A Priority 3 response shall be assigned when potential for further harm to the child and the loss of physical evidence is low. Prior to transferring the case to a Child and Family Services CPS worker, Intake will obtain additional information, research data sources, staff the referral as necessary, determine the priority, complete documentation including data entry, make disposition to CPS, and notify law enforcement. Intake shall also provide the Child and Family Services CPS worker with information concerning prior investigations on SAFE. The Child and Family Services CPS worker will make the face-to-face contact with the alleged victim within a reasonable period of time.

(3) If Child and Family Services received a report concerning a runaway child, Intake will gather information to determine if there is an allegation of abuse, neglect, or dependency that requires a CPS referral or will refer the caller to contact a youth services agency in accordance with Section 62A-4a-501.

(4) Out-of-State Abuse or Neglect Report.

(a) Child and Family Services will take reasonable steps to ensure that reports of abuse or neglect are referred for investigation to the appropriate out-of-state agency and shall take reasonable steps to adequately protect children in Utah who were victims of abuse in another state or country from the alleged perpetrator.

(b) When the referent identifies an incident of abuse or neglect that occurred outside Utah but the child is in Utah at the time of the referral, the Child and Family Services CPS worker shall:

(i) Obtain all the information needed to complete a referral.

(ii) Determine whether the child is at risk of abuse or neglect from the alleged perpetrator.

(iii) Contact the CPS agency in the state where the incident of abuse occurred and complete the referral process of that state.

(iv) Assign the referral to a Child and Family Services CPS worker for a courtesy interview and coordination with the other state's investigation, when requested.

(v) In domestic violence related child abuse cases, recognize another state's protective order.

(vi) If the other state refuses to open an investigation or the investigation is contrary to the evidence acquired in Utah, the referral shall be assigned to a Child and Family Services CPS worker for investigation. The Child and Family Services CPS worker completing the investigation shall review the case with the Attorney General's Office for assistance with jurisdictional issues.

(5) When a referent identifies an incident of abuse or neglect that occurred in Utah, and the child is not in Utah at the time of the referral, the Intake worker shall:

(a) Obtain all the information needed to complete a referral.

(b) Determine the location of the child and the length of time the child will be at their current location. If the child will be outside the state of Utah longer than 30 days, a request for courtesy casework will be made in the state where the child is currently located.

(c) If the child is determined to be at risk, a request will be made for courtesy casework within the priority time frame.

(6) The Department of Health Child Care Licensing unit and/or the Department of Human Services Office of Licensing and appropriate Child and Family Services staff shall be notified by Intake when Child and Family Services receives a referral for an allegation of child abuse, neglect, or dependency against a licensed child care provider or out-of-home care provider. The referral shall be forwarded to the assigned personnel for conflict of interest investigations when the allegation involves a child living in substitute care while in protective custody or temporary custody of Child and Family Services, or any other Child and

Family Services conflict of interest in accordance with Section 62A-4a-202.6.

(7) Availability.

(a) CPS are available in all geographic regions of the state.

KEY: social services, child welfare, domestic violence, child abuse

August 11, 2010 62A-4a-102

Notice of Continuation April 8, 2013 62A-4a-105

62A-4a-202.6

R512. Human Services, Child and Family Services.
R512-201. Child Protective Services, Investigation Services.
R512-201-1. Purpose and Authority.

(1) Purpose. Promoting protection, Child Protective Services (CPS), and safety of children by accurate and timely investigations; and assessments, which determine the capability, willingness, and the availability of resources for achieving safety, permanence, and well-being for the children. The Child and Family Services CPS caseworker shall assess protection, risk, and safety needs of a child, the family's strengths, needs, and challenges, and capacity and willingness of the family to provide for and protect the child, and shall determine appropriate services.

(2) Authority. Pursuant to Sections 62A-4a-105 and 62A-4a-202.3, the Child and Family Services is authorized to provide CPS.

(a) This rule is authorized by Section 62A-4a-102.

R512-201-2. Definitions.

(1) "Immediate Protection and Safety Assessment": An organized protocol whereby Child and Family Services or another agency gathers information to identify the strengths and challenges and other factors of the family members that may contribute to safety or risk issues of a child who may be an alleged victim of abuse, neglect, or dependency.

R512-201-3. Qualifications.

(1) Children who are the subject of a referral for child abuse, neglect, or dependency qualify for investigation services, as described in Section 62A-4a-403 and Rule R512-200, Child Protective Services, Intake Services.

R512-201-4. Scope of Services.

(1) A CPS investigation shall include (but is not limited to) the following:

(a) Immediate Protection and Safety Assessment for the Child. The Child and Family Services CPS caseworker shall assess the immediate protection safety needs of a child and the family's capacity to protect the child. The Child and Family Services CPS caseworker shall include a domestic violence assessment.

(b) CPS Investigation and Assessment. In addition to the requirements of Sections 62A-4a-202.3 and 62A-4a-409, a CPS investigation may include, but is not limited to, the following:

(i) Assessment of immediate risk, safety, and protection needs of a child to include an assessment of risk that an absent parent or cohabitant may pose to the child.

(ii) Assessment of risk, protection, and safety needs for any siblings or other children residing in the home as a sibling or child at risk. Complete the team consultation of each case.

(iii) Assessment of the family's strengths, needs, challenges, limitations, struggles, ability, and willingness to protect the child.

(iv) Determination of eligibility for enrollment or membership in a Native American tribe.

(v) Medical or mental health evaluations completed as required by statute within required time frames to negate or lesson the possibility of physical injury, severe physical abuse, medical neglect, exposure to a hazardous, illegal chemical environment, or recent sexual abuse.

(2) Availability.

(a) CPS services are available in all geographic regions of the state.

(3) Transfer of a Case When a Child has Moved Out of the State of Utah.

(a) Child and Family Services regional and inter-regional offices will cooperate to ensure that a CPS investigation is not interrupted and children are not placed in danger when the child has moved out of the state.

(b) If the child and family move outside the state of Utah before the Child and Family Services CPS caseworker is able to make the face-to-face contact with the child and the new location of the child and family is known, the Child and Family Services CPS caseworker shall contact the state child welfare agency where the family has moved and request courtesy casework. If the state child welfare agency where the family has moved refuses to complete courtesy casework, the case shall be closed as "unable to locate." If the receiving state child welfare agency agrees to complete the courtesy casework, the Child and Family Services CPS caseworker shall make the appropriate finding based on information from the receiving state.

(c) If the child and family move outside the state of Utah after the Child and Family Services CPS caseworker has made the face-to-face contact with the alleged victim and the whereabouts of the child and family are known, the Child and Family Services CPS caseworker who began the investigation shall contact the state child welfare agency where the family has moved and shall make a request for courtesy casework referral, providing the information that was obtained in the investigation. The case shall be closed as "unable to complete investigation" unless the information obtained meets the standard of "reasonable cause to believe" that the abuse, neglect, or dependency occurred. If a finding of "supported" is made against one or both of the parents/caregivers, upon case closure a Notice of Agency Action shall be sent to the address of family in their current state of residence.

(i) If the facts of the investigation establish reason to suspect the child is in imminent danger, the Child and Family Services CPS caseworker shall make appropriate referrals to CPS and law enforcement in the other state and screen the case with the Assistant Attorney General for legal action.

(d) If the child and family move out of the state of Utah after the Child and Family Services CPS caseworker has made the face-to-face contact with the alleged victim and the whereabouts of the child and family are unknown, the Child and Family Services CPS caseworker shall make reasonable efforts to locate the family in order to make a referral to request courtesy casework from the state child welfare agency where the family now resides. Reasonable efforts include (but are not limited to) contacting the post office for a forwarding address and checking with the school to obtain the address where records are being transferred when there is a school-age child in the home.

(4) Transfer of a Case When a Child has Moved Within the State of Utah.

(a) Regional and inter-regional offices will cooperate to ensure that a CPS investigation is not interrupted and children are not placed in danger when the child who is the subject of the investigation has moved within the state of Utah.

(5) Request for Courtesy Casework.

(a) A Child and Family Services CPS caseworker may request courtesy assistance for completion of specific investigative activities on an open CPS case when the child or other related individual is not accessible to the assigned Child and Family Services CPS caseworker.

(6) Courtesy Casework Request from Another State.

(a) A Child and Family Services CPS caseworker shall assist in the protection and supervision of a child under the jurisdiction of another state.

(7) Duration of Services.

(a) Unable to Locate Within the State of Utah. A Child and Family Services CPS caseworker shall not close an investigation solely on the grounds that the child could not be located until reasonable efforts have been made by the caseworker to locate the child and family members.

(b) Case Finding. At the conclusion of a CPS investigation, a finding shall be made for each allegation identified at the time of Intake or identified during the

investigation. Each alleged victim in the case shall be linked to a specific allegation or allegations and to an alleged perpetrator or alleged perpetrators. Acceptable findings include:

(i) Supported. A case finding of supported shall be used when there is a reasonable basis to conclude that abuse, neglect, or dependency occurred, even if the alleged perpetrator is unknown.

(ii) Unsupported. A case finding of unsupported/not accepted shall be used when there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.

(iii) Without Merit. A case finding of without merit shall be used when there is evidence that abuse, neglect, or dependency did not occur.

(iv) Unable to Locate. A case finding of unable to locate shall be used when the Child and Family Services CPS caseworker was unable to complete face-to-face contact with the alleged victim and all reasonable efforts were made to locate the child and family members.

(v) Unable to Complete Investigation. A case finding of unable to complete investigation shall be used when the caseworker is unable to complete the investigation because the subject of the investigation has moved out of the state or similar reason.

KEY: social services, child welfare, domestic violence, child abuse

October 13, 2010	**62A-4a-102**
Notice of Continuation April 8, 2013	**62A-4a-105**
	62A-4a-202.3

R512. Human Services, Child and Family Services.
R512-202. Child Protective Services, General Allegation Categories.
R512-202-1. Purpose and Authority.

(1) The purpose of this rule is to provide information about the allegation categories used by the Division of Child and Family Services (Child and Family Services).

(2) Pursuant to Section 62A-4a-105, Child and Family Services is authorized to provide Child Protective Services (CPS).

(3) This rule is authorized by Section 62A-4a-102.

R512-202-2 Categories.

(1) Qualification for Services.

(a) The Child and Family Services worker receiving or investigating a report of child abuse, neglect, or dependency shall categorize the information into an allegation category. Severe and chronic categories of abuse and neglect are found in Sections 62A-4a-101 and 62A-4a-1002. This rule contains the allegation categories that are not severe or chronic.

(2) Referral and Investigation Allegation Categories for Abuse, Neglect, and Dependency.

(a) Abuse:

(i) Child endangerment:

(A) Driving under the influence with children in the vehicle;

(B) Homes where there are lab paraphernalia, chemicals for manufacturing illegal drugs, access to illegal drugs, distribution of illegal drugs in the presence of a child, loaded weapons within the reach of the child, or exposure to pornography;

(C) Giving children illegal drugs or substances, alcohol, tobacco, or non-prescribed/not recommended medications for that child;

(D) Involving a child in the commission of crimes, such as shoplifting;

(E) Other circumstances endangering a child.

(ii) Domestic Violence Related Child Abuse:

(A) Potential for or actual injury to a child during a domestic violence episode;

(B) Violent physical and/or verbal altercation between adults in the presence a child.

(iii) Emotional abuse:

(A) General emotional abuse, such as a pattern or severe isolated incident of:

(I) Demeaning or derogatory remarks about the child or other family member in the presence of the child;

(II) Perception of or actual threatened harm;

(III) Corrupting or exploiting the child;

(IV) Multiple false reports to CPS;

(V) Terrorizing;

(VI) Spurning (hostile rejecting);

(VII) Denying emotional responsiveness;

(VIII) Isolating.

(iv) Material harmful to a child.

(v) Physical abuse:

(A) Physical abuse, general, excluding any physical abuse as defined herein, including (but not limited to):

(I) Non-accidental injury to a child that may or may not be visible;

(II) Unexplained injuries to an infant or toddler;

(III) Unexplained injuries to a disabled or non-verbal child.

(vi) Fetal exposure to alcohol or other substances.

(vii) Fetal addiction to alcohol or other harmful substances.

(viii) Pediatric Condition Falsification (formerly known as Munchausen Syndrome by Proxy).

(2) Neglect:

(a) Medical neglect. This allegation or finding needs to be based on the opinion of the child's primary care physician or other licensed medical professional. A parent or guardian may obtain a second opinion to be considered in determining medical neglect, at their own expense. A parent or guardian may obtain a second medical opinion to present for consideration by Child and Family Services, but Child and Family Services is not bound by the opinion and shall consider the totality of the facts.

(b) Baby Doe (congenital birth defect that parents or caregiver declines to treat).

(c) Failure to thrive, based on the opinion of the child's primary care physician or other licensed medical professional.

(d) Neglect of child's physical health.

(e) Neglect of child's psychological health.

(f) Neglect of child's dental health.

(g) Pediatric Condition Falsification (formerly known as Munchausen Syndrome by Proxy).

(h) Physical neglect.

(i) Sibling or child at risk.

(j) Educational neglect occurs when a child has been frequently absent from school without good cause or that the parent has failed to cooperate with school authorities in a reasonable manner according to Section 78A-6-319.

(k) Failure to protect.

(l) Non-supervision.

(m) Abandonment.

(n) Environmental neglect. Physical neglect of the environment such as absence of utilities, home conditions below minimum standards, hazards, etc.

(o) Dependency. A child who is homeless or without proper care through no fault of the child's parent, guardian, or custodian. Institutionalization of a parent or guardian who has not or cannot arrange for safe and appropriate care for the child.

KEY: social services, child welfare, domestic violence, child abuse

October 13, 2010	**62A-4a-102**
Notice of Continuation April 8, 2013	**62A-4a-105**

R512. Human Services, Child and Family Services.
R512-500. Kinship Services, Placement and Background Screening.
R512-500-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for kinship placement for a child who is in Child and Family Services custody, including Preliminary Placement, evaluation of kinship caregiver capacity for ongoing care, and background screening.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-209, 78A-6-307, and 78A-6-307.5.

R512-500-2. Definitions.

(1) "Abuse" is defined in Section 78A-6-105.

(2) "Child" is defined in Section 62A-4a-101.

(3) "Child and Family Services" means the Division of Child and Family Services, Department of Human Services.

(4) "Child and Family Team" has the same meaning as defined in Rule R512-301.

(5) "Friend" means an individual, other than a non-custodial parent or relative as defined in Section 78A-6-307, who is licensed as a foster parent and is designated for preference for care of a child by a custodial parent or guardian of the child in accordance with Section 62A-4a-209.

(6) "Kinship caregiver" means a non-custodial parent, relative, or friend, as defined in this section, who is selected for placement and care of a child in Child and Family Services custody.

(7) "Neglect" is defined in Section 78A-6-105.

(8) "Non-custodial parent" is a natural parent as defined in Section 78A-6-307 who is a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has had paternity established, who has not been granted legal custody of the child.

(9) "Non-relative" is defined in Section 62A-4a-209.

(10) "Preliminary Placement" means an out-of-home placement with a non-custodial parent or relative, or with a friend who is a licensed foster parent, which is referred to in statute as an emergency placement with a non-custodial parent or relative as authorized in Section 62A-4a-209 or a post-shelter hearing placement with a non-custodial parent or relative as authorized in Section 78A-6-307.5.

(11) "Relative" is defined in Section 78A-6-307 as the child's "grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, or sibling of the child." For a Native American child, relative also includes "extended family members" as defined by the Indian Child Welfare Act (ICWA), 25 USC 1903, which is "by the law or custom of the Native American child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Native American child's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

(12) "Severe type of child abuse or neglect" is defined in Section 62A-4a-1002.

(13) "Substantiated" is defined in Section 62A-4a-101.

(14) "Supported" is defined in Section 62A-4a-101.

R512-500-3. Philosophy.

(1) All children need permanency through enduring relationships that provide stability, familiarity, and support for the culture of the child; support the child's sense of self based on existing attachments; provide for the child's safety and physical care; and connect the child to their past, present, and future through continuing family relationships. First priority is to maintain a child safely at home. However, if a child cannot safely remain at home, kinship care has the potential for providing these elements of permanency by virtue of the kin's knowledge of and relationship to the family and child.

(2) All kinship work is done in the context of a Child and Family Team. Kinship care includes elements of child protection, in-home services, family preservation, and out-of-home care. When a child cannot safely remain home, kinship care is preferable to other out-of-home placements if the kinship caregiver can keep the child safe and appropriately meet the child's needs.

(3) The caregiver's willingness and ability to care for and keep the child safe are fundamental. The kinship caregiver must have or acquire knowledge of the child, be able to meet the child's needs, support reunification efforts, and be able to provide the child access to parents, siblings, and other family members through visits or caring for the child and siblings as a group.

(4) Ongoing assessment of the child's safety, permanence, and well-being is important to the stability and value of kinship care. Ongoing assessment of safety is based on the components of safety decision-making, which include threats of harm, vulnerabilities of the child, and protective capacities of the kinship caregiver and their support system.

(5) Providing for kinship care in the Child and Family Services spectrum of services requires active efforts to identify and locate kin families with whom children may form or continue relationships at home or in temporary or permanent placements. Support to kinship caregivers is essential to the success of the child's placement with the family and to the family's ability to respond to the needs of the child. As members of the Child and Family Team, kinship caregivers will seek support from other family members and from informal and formal supports to provide for the child.

R512-500-4. Preferences for Placement.

(1) The following order of preference applies to placement of a child in the custody of Child and Family Services, and is subject to the child's best interest:

(a) A non-custodial parent of the child in accordance with Section 78A-6-307;

(b) A relative of the child;

(c) A friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent; and

(d) A former out-of-home care placement, shelter facility, or other out-of-home care placement designated by Child and Family Services.

(2) Preferential consideration given to kinship caregivers in Section 78A-6-307 expires 120 days from the date of the shelter hearing. Prospective kinship caregivers may be considered for placement after the 120 days has lapsed, if it is in the best interest of the child.

(3) A kinship caregiver who meets the definition of friend must be licensed as an out-of-home care provider in order for a child in the custody of Child and Family Services to be placed with them.

R512-500-5. Preliminary Placement.

(1) The requirements specified in Section 62A-4a-209 must be met for Preliminary Placement of a child with a kinship caregiver.

(2) A decision to make a Preliminary Placement of a child with a kinship caregiver will include background screening, assessment of the kinship caregiver's willingness and ability to care for a child and to keep the child safe, a limited home inspection, and background screening.

(3) A kinship caregiver must meet the background check requirements specified in R512-500-7.

(4) Assessment of safety will be based on safety decision-making principles, which include:

(a) Potential threats of harm;

(b) Vulnerabilities of the child; and

(c) Protective capacities of the potential kinship caregiver and their support system.

(5) The limited home inspection specified in Section 62A-4a-209 is required for a non-custodial parent or relative. The limited home inspection is conducted in the home of the prospective kinship caregiver to determine if there are apparent safety risks in the home that present a potential threat of harm to the child. The limited home inspection determines if the following are met:

(a) The home is free from observable health and fire hazards.

(b) There are adequate sleeping arrangements to meet the specific needs of each child.

(c) Any firearms, ammunition, hazardous chemicals, and/or medications are secured and not accessible to children.

(6) References may be contacted to obtain input regarding placing the child with the potential kinship caregiver or information about other available relatives or friends who may care for the child.

R512-500-6. Evaluation of Capacity for Ongoing Care of a Child.

(1) The Child and Family Team will determine the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(a) Since the Preliminary Placement is made in an emergency situation they may or may not be the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(b) The ongoing caregiver may be the kinship caregiver who is the Preliminary Placement or may be a different prospective caregiver.

(2) Child and Family Services will evaluate with the prospective caregiver their capacity for ongoing care of the child as well as permanency if reunification efforts are not successful. The components of the evaluation process include:

(a) The child-specific home study, including:

(i) Results of the background screening specified in R512-500-7;

(ii) Obtaining positive written references from three different people known to the kinship caregiver expressing the referent's opinion about the family's ability to care for the child;

(iii) Physical and emotional ability of the kinship caregiver to provide adequate care for the child;

(iv) Understanding of family dynamics and how placement will impact relationships within the family;

(v) Ability to provide for the child's safety and well-being needs and to support a plan for permanency;

(vi) Analysis of the type of resources and support needed by the kinship caregiver to care for the child.

(vii) Ability of the home to meet required safety standards of the Office of Licensing.

(b) Providing information to the kinship caregiver to assist with considering options for ongoing care of the child, including:

(i) Educating the kinship caregiver of the expectations of caring for a child who is under the jurisdiction of the court.

(ii) Assessing the resources that may be available to assist the kinship caregiver in providing a stable placement for the child.

(iii) Becoming a licensed out-of-home care placement for the child.

(iv) Requesting temporary custody and guardianship from the court.

R512-500-7. Background Screening.

(1) Background Screening Procedure for Preliminary Placements.

(a) In order for a non-custodial parent or relative to be considered for Preliminary Placement of a child, background screening must be completed that meets the requirements of Sections 62A-4a-209, 78A-6-307, and 78A-6-308. If any non-relative adults live in the household, applicable background screening requirements in Sections 62A-4a-209, 78A-6-307, and 78A-6-308 must be met.

(b) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information in order for background screening to be conducted:

(i) Full first, middle, last, maiden, alias, and all previous married names.

(ii) Social Security number, if a number has been issued.

(iii) Proof of identity verified by a government-issued photo identification.

(iv) Date of birth.

(2) Background Screening Procedure for Ongoing Care of a Child.

(a) As part of the evaluation of capacity for ongoing care of a child, in addition to background screening required for Preliminary Placement, a relative and spouse or partner must complete an FBI national criminal history records check as prospective out-of-home care or adoptive parents. A non-custodial parent will complete an FBI national criminal history check if Utah criminal history or SAFE child abuse checks result in concerns about potential threats of harm to the child or if ordered by the court.

(b) If a non-relative 18 years of age or older is residing in the home and has lived outside of the state of Utah in the five years immediately preceding the date of the application, the individual must complete an FBI national criminal history records check.

(c) If any person 18 years of age or older residing in the home has lived out of the state of Utah in the five years immediately preceding the date of the application, a child abuse and neglect registry check must be completed for any state in which the individual resided.

(d) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information on a form provided by Child and Family Services in order for background screening to be conducted:

(i) Full first, middle, last, maiden, alias, and all previous married names.

(ii) Social Security number, if a number has been issued.

(iii) Proof of identity verified by a government-issued photo identification.

(iv) Date of birth.

(v) The potential kinship caregiver and applicable adults living in the household shall provide fingerprints from an authorized law enforcement agency or designated electronic scanning site.

(vi) The child abuse registry for each state in which a potential kinship caregiver or other adult in the household has lived will be checked.

KEY: child welfare, kinship

December 22, 2010	**62A-4a-102**
Notice of Continuation April 8, 2013	**62A-4a-105**
	62A-4a-209
	78A-6-307
	78A-6-307.5
	78A-6-308

R527. Human Services, Recovery Services.
R527-475. State Tax Refund Intercept.
R527-475-1. Purpose and Authority.

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. This rule establishes procedures for the Office of Recovery Services/Child Support Services (ORS/CSS) to intercept a state tax refund to recover delinquent child support pursuant to Section 59-10-529(1).

R527-475-2. State Tax Refund Intercept.

1. For a state tax refund to be intercepted, there must be an administrative or judicial judgment with a balance owing. An installment of child support is considered a judgment for purposes of Section 59-10-529 on and after the date it becomes due as provided in Section 78B-12-112.

2. State tax refunds intercepted will first be applied to current support, second to Non-IV-A arrearages, and third to satisfy obligations owed to the state and collected by ORS/CSS.

3. ORS/CSS shall mail prior written notice to the obligor who owes past-due support and the unobligated spouse that the state tax refund may be intercepted. The notice shall advise the unobligated spouse of his/her right to receive a portion of the tax refund if the unobligated spouse has earnings and files jointly with the obligor. If the unobligated spouse does not want his/her share of the tax refund to be applied to the obligated spouse's child support debt, the unobligated spouse shall make a written request and submit a copy of the tax return and W-2's to ORS/CSS at any time after prior notice, but in no case later than 25 days after the date ORS/CSS intercepts the tax refund. If W-2s are unavailable, ORS/CSS may use amounts of incomes as reported on the joint tax return. The unobligated spouse's portion of the joint tax refund will be prorated according to the percentage of income reported on the W-2 forms or the joint tax return for the tax year. If the unobligated spouse does not make a written request to ORS/CSS to obtain his share of the tax refund within the specified time limit, ORS/CSS shall not be required to pay any portion of the tax refund to the unobligated spouse.

KEY: child support, taxes
June 25, 2008 59-10-529
Notice of Continuation April 8, 2013 78B-12-112

R527. Human Services, Recovery Services.
R527-920. Mandatory Disbursement to Obligee Through Electronic Funds Transfer.
R527-920-1. Authority and Purpose.

(1) Section 62A-11-107 authorizes the Office of Recovery Services/Child Support Services (ORS/CSS) to adopt, amend and enforce rules. Section 62A-11-704 authorizes ORS/CSS to make rules to allow exceptions to mandatory disbursements by electronic funds transfer.

(2) The purpose of this rule is to outline the procedures for establishing electronic funds transfers to obligees and to specify appropriate exceptions to the requirement for ORS/CSS to make disbursements by electronic funds transfer as allowed in Section 62A-11-704.

R527-920-2. Procedures.

(1) ORS/CSS will notify obligees that have enforceable support orders of the available options for receiving electronic funds transfers. Written information about electronic funds transfer options will be sent to the best available addresses for eligible obligees.

(2) Written information about electronic funds transfer options will be sent at the following points in time if an obligee has not already arranged for electronic funds transfers:

(a) When Section 62A-11-704, mandating disbursement through electronic funds transfers, is implemented by ORS/CSS;

(b) When a new case is opened with ORS/CSS that is accompanied by an enforceable support order;

(c) When a first-time support order is established for an open case with ORS/CSS;

(d) When an established account for receiving electronic funds transfers is no longer appropriate for future transfers; or,

(e) When a previously-selected method for receiving electronic funds transfers will no longer be offered by ORS/CSS.

(3) Written information about electronic funds transfer options will be sent to obligees that have previously enrolled in this service in the following situations:

(a) When a previously-established account for receiving electronic funds transfers is no longer available to the obligee for future transfers; or,

(b) When a previously-selected method for receiving electronic funds transfers will no longer be offered by ORS/CSS.

(4) Upon receiving the written information about electronic funds transfer options, each obligee will be allowed to select from the available options and return the form to ORS/CSS to indicate his or her preferred method for receiving electronic payments. If an obligee fails to indicate a preference or fails to provide the necessary information to establish the preferred method of electronic funds transfer within sixty days of the date on the written notice, ORS/CSS has the option of enrolling that obligee in a plan to receive payments in an account that may be accessed through the use of an electronic access card.

(5) Payments will be disbursed by paper checks while the method of electronic funds transfer is established.

R527-920-3. Exceptions.

(1) Exceptions to mandatory disbursements through electronic funds transfer are allowed as follows:

(a) For a period of no more than 60 days after a case is opened with an enforceable support order;

(b) For a period of no more than 60 days after a first-time support order is established;

(c) For a period of no more than 60 days while an obligee changes the account to be used for receiving future electronic funds transfers; or,

(d) For an indefinite time period if an obligee resides in a foreign country and an electronic funds transfer cannot be facilitated;

(2) The ORS or ORS/CSS Director may approve additional exceptions to mandatory disbursements through electronic funds transfers on a case-by-case basis if the obligee presents a request in writing and can demonstrate that electronic funds transfers would result in an undue hardship to that obligee. The ORS or ORS/CSS Director will determine the duration of the exception based on the individual circumstances.

(3) Disbursements through electronic funds transfer will not be mandatory for ORS/CSS if technical problems prevent successful electronic disbursement within the federally-mandated disbursement time frames found in 45 CFR 302.32.

KEY: electronic funds transfer, child support
June 27, 2008 62A-1-111
Notice of Continuation April 29, 2013 62A-11-107
62A-11-704

R539. Human Services, Services for People with Disabilities.
R539-1. Eligibility.
R539-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1; and

(b) notice to Applicants of hearing rights and the hearing process.

R539-1-2. Authority.

(1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1.

(2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R539-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101.

(2) In addition:

(a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;

(b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;

(c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;

(d) "Department" means the Department of Human Services;

(e) "Division" means the Division of Services for People with Disabilities;

(f) "Electronic Surveillance" is observing or listening to persons, places, or activities with the aid of electronic devices such as cameras, web cams, global positioning systems, motion detectors, weight detectors or microphones, in real time.

(g) "Electronic Surveillance Certification" is documentation signed by members of the Provider Human Rights Committee that contains the location of the site under surveillance, description of the types of surveillance to be used, names of persons to be under surveillance and signed consent from each person affected as required by Subsections R539-3-7(3)(a) and R539-3-7(4)(a).

(h) "Form" means a standard document required by Division rule or other applicable law;

(i) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;

(j) "Hearing Request" means a written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;

(k) "ICF/ID" means Intermediate Care Facility for People with Intellectual Disability;

(l) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;

(m) "Related Conditions" means a severe, chronic disability that meets the following conditions:

(i) It is attributable to:

(A) Cerebral palsy or epilepsy; or

(B) Any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disability, and requires treatment or services similar to those required for these persons.

(ii) It is manifest before the person reaches age 22.

(iii) It is likely to continue indefinitely.

(iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care.

(B) Understanding and use of language.

(C) Learning.

(D) Mobility.

(E) Self-direction

(F) Capacity for independent living.

(n) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

(o) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah.;

(p) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

(q) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

(r) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

(s) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the intellectual disabilities or related conditions waiver, the brain injury waiver and physical disabilities waiver.

R539-1-4. Non-Waiver Services for People with Intellectual Disabilities or Related Conditions.

(1) The Division will serve those Applicants who meet the definition of a person with a disability in Subsections 62A-5-101(9).

(2) When determining functional limitations in the areas listed below for Applicants ages 7 and older, age appropriate abilities must be considered.

(a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

(b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

(c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency without the assistive device.

(e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or

paying bills.

(f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial, habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with intellectual disability as per R539-1-3 or related conditions.

(a) Applicants who have a primary diagnosis of mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance use disorder or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the State of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered intellectual disability or related conditions services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within the Division office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child is at risk for substantial functional limitation in three areas of major life activity due to intellectual disability or related conditions; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver intellectual disability or related conditions services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are meet.

(12) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-5. Medicaid Waiver for People with Intellectual Disability or Related Conditions.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Intellectual Disabilities or Related Conditions to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

R539-1-6. Non-Waivered Services for People with Physical Disabilities.

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services

are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for intellectual disability or related condition and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

R539-1-7. Medicaid Waiver for People with Physical Disabilities.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

R539-1-8. Non-Waiver Services for People with Brain Injury.

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury (by a licensed physician) according to the International Classifications of Diseases, 9th Revision, (ICD 9 CM). The following codes listed below qualify for ABI services:

047.9--aseptic meningitis (unspecified viral meningitis)

290 - 294 Codes not accepted as stand alone diagnosis (needing additional diagnosis)

290.4--vascular dementia

290.10 Prehensile dementia, uncomplicated

293.9--psychotic, post traumatic brain injury syndrome

294.0--amnesia

294.9--unspecified persistent mental disorders due to conditions classified elsewhere

294.9--with psychotic reaction

294.10-294.11--dementia without and with behavior disturbance Aggression, combative violent behaviors and wandering off

310.0 - 310.9 nonpsychotic disorder, brain damage

310.0--frontal lobe syndrome

310.1--mild memory loss or lack following organic brain damage

310.1--personality change due to conditions classified elsewhere

310.2--post concussion syndrome

310.2--post contusion syndrome, includes encephalopathy

310.2--post contusion syndrome, includes TBI

310.2--post contusion syndrome, includes TBI

310.2--post traumatic brain injury

310.2--post traumatic brain injury syndrome

310.8 - 310.9--other nonpsychotic mental disorder, following organic brain damage

310.8--other specified mental disorder following organic brain damage

310.8--other specified nonpsychotic mental disorders following organic brain damage

310.9--organic brain syndrome

310.9--Organic brain syndrome

310.9--organic brain syndrome (chronic or acute)

310.9--unspecified nonpsychotic mental disorder following organic brain damage

320.9--meningitis, bacterial

322.0--meningitis, nonpyogenic

322.2--meningitis, chronic

322.9--meningitis

323.0 - 323.82--choose to pick cause of encephalitis, not 323.9

324.0 - 324.9--Intracranial and intraspinal abscess

325 Phlebitis and thrombophlebitis of intracranial venous sinuses

326 Late effects of intracranial abscess or pyogenic infection

348.0--arachnoid cyst, brain; not as stand alone diagnosis (needs additional diagnosis)

348.1--anoxic brain damage

349.82 Toxic encephalopathy

430--subarachnoid hemorrhage

431--intracerebral hemorrhage

432.0--hematoma, non-traumatic brain
432.1--subdural hematoma
432--other and unspecified intracranial hemorrhage
433 Occlusion and stenosis of precerebral arteries (only if 5th digit is 1)
434 Occlusion of cerebral arteries (only if 5th digit is 1)
436--brain or cerebral, acute seizure; need another diagnosis in combination
438 - 438.89 Late effects of cerebrovascular disease (excluding 438.9)
780.93--Memory loss amnesia -only in combination with an E Code - (excludes 310.1 Mild Memory Disturbance due to organic brain damage) need an E code secondary to cause
List codes from 800 - 804 then 5th digit list only those that are 2 - 9 exclude 0 to 1(excluding 802's)
800.0--closed skull fracture, vault (parietal, frontal, vertex)
800.1 Fracture skull vault (frontal parietal) closed with laceration and contusion
800.1--closed skull fracture, vault with cerebral contusion
800.2 closed head injury with subarachnoid, subdural, and extradural hemorrhage
800.2 Closed skull fracture, with subarachnoid, subdural, and extradural hemorrhage
800.2--closed skull fracture, vault with epidural, extradural hemorrhage
800.2--closed skull vault fracture with subdural hemorrhage
800.3--closed skull fracture, vault with intracranial hemorrhage
800.3--Closed skull fx with other and unspecified intracranial hemorrhage
800.4--closed skull fracture, vault with intracranial injury
800.4--closed skull fx with intracranial injury of other and unspecified nature
800.5 - 800.9--Open skull fracture, vault (parietal or frontal area)
800.6--open skull fx with cerebral laceration and contusion
800.7--open skull fx with subarachnoid, subdural, and extra dural hemorrhage
800.7--open skull vault fracture with subdural hemorrhage
800.8--open skull fx other and unspecified intracranial hemorrhage
800.9--Open skull fx with intracranial injury of other and unspecified nature
800.9--open vault fracture with intracranial injury of other and unspecified nature
801.0 - 801.9 Fracture of base of skull
801.0--closed skull fracture, base
801.1--closed skull fracture, with cerebral hemorrhage
801.2--closed skull base fracture with subdural hemorrhage
801.2--closed skull fracture with epidural hemorrhage
801.3 - 801.4--closed skull fracture, base with intracranial hemorrhage
801.5 - 801.9--open skull fracture, base of skull
801.7--open skull base fracture with subdural hemorrhage
803.0 - 804.9--Other and unqualified skull fractures (includes single or multiple fx)
803.0--closed skull fracture with facial injuries
803.1--closed skull fracture with cerebral contusion
803.2--closed skull fracture with epidural, extradural hemorrhage
803.2--closed skull fracture, with subachnoid, subdural, and extradural hemorrhage
803.2--other and unqualified skull fractures, closed, subdural hemorrhage
803.3--closed skull fracture with intracranial hemorrhage
803.4--closed skull fracture with intracranial injury
803.5 - 803.9--open skull fracture, other and unqualified
803.7--other and unqualified skull fractures, open, subdural hemorrhage
804.2--multiple fractures skull and face, closed, subdural hemorrhage
804.5 - 804.9--Open skull fracture, multiple fractures skull and face
804.7--multiple fractures skull and face, open, subdural hemorrhage
List codes from 850-854 then 5th digit list only those that are 2 - 9 exclude 0 to 1
850.1 - 850.5--concussion with loss of conscious
851.0 - 851.9--cerebral laceration and contusion, open or closed, specifies site
851.0--cerebral contusion without mention open wound
851.2--cerebral laceration without mention of open wound
851.4 or 851-6--cerebral or brain stem contusion s mention open wnd
851.4--contusion brain stem
851.8--cerebral contusion (851.0 - 851.9--specify site, open, closed)
851.8--contusion brain
851.8--other and unspecified cerebral contusion
851.8--other unspecified cerebral s mention open wound
852.0, 852.2, 854.4 hemorrhage s mention open wound
852.0 - 852.5--Subarachnoid, subdural, and extradural hemorrhage following injury
852.0--subarachnoid hemorrhage
852.2 - 852.3--subdural hemorrhage, injury, without mention open, open
852.2--subdural hemorrhage following injury, s mention open wound
852.2--traumatic brain injury, subdural
852.3--subdural hemorrhage following injury, with open wound
852.4 - 852.5--extradural hemorrhage injury, without mention open
853.0 other intracranial hemorrhage after injury s mention open wound
853.0 - 853.1--other and unspecified intracranial hemorrhage following injury
853.0--hematoma, traumatic brain
854.0 - 854.1--Intracranial injury of other and unspecified nature
854.0--injury intracranial
854.0--intracranial hemorrhage due to injury
854.1--intracranial injury of other and unspecified nature s mention open w
905.0 Late effects of fracture of skull and face bones (5th digit list only those that are 2 - 9 exclude 0 - 1)
906.0 Late effects of open wound of head, neck, and trunk (5th digit list only those that are 2 - 9 exclude 0 - 1)
907.0--late effect of intracranial injury (5th digit list only those that are 2 - 9 exclude 0 - 1);

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Comprehensive Brain Injury Assessment Form 4-1.

(d) meet at least three of the functional limitations listed under number (4).

(2) Applicants with functional limitations due solely to mental illness, substance use disorder or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer are ineligible for non-waiver services.

(3) Applicants with intellectual disability or related conditions are ineligible for these non-waiver services.

(4) In addition to the definitions in Section 62A-5-101(3) and (5), eligibility for brain injury services will be evaluated according to the Applicant's functional limitations as described in the following definitions:

(a) Memory or Cognition means the Applicant's brain injury resulted in substantial problems with recall of

information, concentration, attention, planning, sequencing, executive level skills, or orientation to time and place.

(b) Activities of Daily Life means the Applicant's brain injury resulted in substantial dependence on others to move, eat, bathe, toilet, shop, prepare meals, or pay bills.

(c) Judgment and Self-protection means the Applicant's brain injury resulted in substantial limitation of the ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or mental or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(d) Control of Emotion means the Applicant's brain injury resulted in substantial limitation of the ability to regulate mood, anxiety, impulsivity, agitation, or socially appropriate conduct.

(e) Communication means the Applicant's brain injury resulted in substantial limitation in language fluency, reading, writing, comprehension, or auditory processing.

(f) Physical Health means the Applicant's brain injury resulted in substantial limitation of the normal processes and workings of the human body.

(g) Employment means the Applicant's brain injury resulted in substantial limitation in obtaining and maintaining a gainful occupation without ongoing supports.

(5) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(6) The Applicant or the Applicant's Guardian must be physically present in Utah and provide evidence of residency prior to the determination of eligibility.

(7) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(8) The intake worker will complete or compile the following documents as needed to make an eligibility determination:

(a) Comprehensive Brain Injury Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824L, completed or updated within one year of eligibility determination;

(9) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to the Applicant or the Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(10) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(11) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(12) Persons receiving Brain Injury services will have their eligibility re-determined on an annual basis. Persons who are determined to no longer be eligible for services will have a transition plan developed to discontinue services and ensure that health and safety needs are met.

R539-1-9. Medicaid Waiver for People with Acquired Brain Injury.

(1) Pursuant to R414-61-2, matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

R539-1-10. Graduated Fee Schedule.

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Intellectual Disability or Related Conditions Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-5(2), R539-1-7(2), and R539-1-9(2) rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members

will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate, they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause why the fee cannot be paid, the Division Director may grant exceptions on a case-by-case basis.

R539-1-11. Social Security Numbers.

(1) The Division requires persons applying for services to provide a valid Social Security Number. The Division adopts the same standard as Utah Administrative Code, Rule R414-302-5 and 42 CFR 435.910, 1997 ed., which is incorporated by reference.

KEY: human services, disabilities, social security numbers
April 18, 2013 62A-5-103
Notice of Continuation November 5, 2012 62A-5-105

R592. Insurance, Title and Escrow Commission.
R592-2. Title Insurance Administrative Hearings and Penalty Imposition.
R592-2-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-404(2)(e) and (h), to provide the process for conducting or delegating a title administrative hearing and imposing a penalty for a violation of statute or rule.

R592-2-2. Purpose and Scope.

(1) The purposes of this rule are:

(a) to establish procedures for the commission:

(i) to delegate to the commissioner's administrative law judge the conduct of an administrative hearing to resolve a title insurance matter; or

(ii) to conduct an administrative hearing to resolve a title insurance matter; and

(b) to establish procedures for the commission,

(i) to impose penalties; and

(ii) for the commissioner to concur with the penalties imposed.

(2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing the business of title insurance, and continuing education providers submitting title continuing education programs for approval.

R592-2-3. Definitions.

For purposes of this rule, the commission adopts the definitions set forth in Utah Code Annotated (U.C.A.) Title 31A and the following:

(1) "Commission" means the Title and Escrow Commission.

(2) "Commissioner" means Utah's insurance commissioner.

(3) "Title insurance matter" means a matter related to:

(a) title insurance; and

(b) an escrow conducted by a title producer.

R592-2-4. Title Insurance Matters Referred for Enforcement.

(1) A title insurance matter referred for enforcement will be resolved by:

(i) an informal adjudicative action pursuant to R592-2-5;

(ii) a stipulation and order issued by the commissioner; or

(iii) an administrative hearing conducted either by the commission or the commissioner's administrative law judge pursuant to R592-2-6.

R592-2-5. Imposition of a Penalty When an Informal Adjudicative Proceeding Is Used to Resolve a Title Insurance Matter.

(1) If the commissioner uses an informal adjudicative proceeding as set forth in 63G-4-203 and R590-160 to resolve a violation listed in Table 1 below, the commissioner shall use the penalties imposed by the commission in this Section.

(2) The commission shall impose the following penalties on title licensees for the violations listed in Table 1 below when resolved through an informal adjudicative proceeding.

Table 1

Violation	1st Proceeding	2nd Proceeding
Failure to complete required continuing education hours.	Individual: $1,000; Agency: n/a	Individual: $2,000: Agency: n/a
Failure to respond to an inquiry of the commissioner.	Individual: $500; Agency: $750	Individual: $1,000; Agency: $1,500
Failure to file a required rate, form, or report.	Individual: n/a Agency: $1,000	Individual: n/a; Agency: $2,000
Late filing of a required rate, form, or report.	Individual: n/a; Agency: $750	Individual: n/a; Agency: $1,500
Failure to charge or collect a correct premium or a correct filed fee.	Individual: $1,000; Agency: $2,500	Individual: $2,000; Agency: $5,000
Charging or collecting a non-filed required fee.	Individual: $1,000; Agency: $2,500	Individual: $2,000; Agency: $5,000
Failure to pay assessment when due.	Individual: $500; Agency: $750	Individual: $1,000; Agency: $1,500

R592-2-6. Use of an Administrative Hearing to Resolve a Title Insurance Matter.

(1) When the commissioner sets a date for an administrative hearing to resolve a title insurance matter, the commissioner shall inform the commission of the hearing date.

(2) After being informed of a hearing date, the commission shall:

(a) delegate the conduct of the administrative hearing to the commissioner's administrative law judge; or

(b) conduct the administrative hearing.

(3) For an administrative hearing conducted by the commission, the commission shall:

(a) accept the date, time and place set by the commissioner or set a different date, time, and place for the administrative hearing;

(b) cause notification to be sent to the respondent(s), the commissioner's administrative law judge, and the commissioner's enforcement attorney of the date, time, and place of the administrative hearing;

(c) conduct the hearing pursuant to R590-160;

(d) impose penalties in accordance with Sections 31A-2-308, 31A-23a-111, 31A-23a-112, 31A-26-213, and 31A-26-214, subject to the concurrence of the commissioner; and

(e) issue an Order on Hearing.

(4) The commissioner's administrative law judge shall assist the commission in its conduct of an administrative hearing.

R592-2-7. Imposition of Penalties.

The commission shall impose a penalty as follows:

(1) for an informal adjudicative proceeding, a penalty shall be imposed in accordance with Table 1 in R592-2-5;

(3) for an administrative hearing conducted by the commissioner's administrative law judge pursuant to R592-2-6 (2)(a), the commission shall impose the recommended penalty or a different penalty, subject to the concurrence of the commissioner; or

(4) for an administrative hearing conducted by the commission, the commission shall impose a penalty, subject to the concurrence of the commissioner.

R592-2-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

R592-2-9. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

KEY: title insurance
May 1, 2013 **31A-2-402**
Notice of Continuation September 15, 2010

R600. Labor Commission, Administration.
R600-1. Declaratory Orders.
R600-1-1. Purpose.

A. As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules and orders governing or issued by the agency.

B. In order of importance, procedures governing declaratory orders are:

(1) procedures specified in this rule pursuant to Chapter 46b of Title 63, U.C.A.;

(2) the applicable procedures of Chapter 46b of Title 63;

(3) applicable procedures of other governing state and federal law; and

(4) the Utah Rules of Civil Procedure.

R600-1-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, except and in addition:

A. "Applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

B. "Declaratory Order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule or order.

C. "Director" means the agency head or governing body with jurisdiction over the Agency's adjudicative proceedings.

R600-1-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

B. The petition shall:

(1) be clearly designated as a request for an agency declaratory order;

(2) identify the statute, rule, or order to be reviewed;

(3) describe in detail the situation or circumstances in which applicability is to be reviewed;

(4) describe the reason or need for the applicability review, addressing in particular, why the review should not be considered frivolous;

(5) include an address and telephone number where the petitioner can be contacted during regular work days; and

(6) be signed by the petitioner.

R600-1-4. Reviewability.

The agency shall not issue a declaratory order if the subject matter is:

A. not within the jurisdiction and competence of the agency;

B. frivolous, trivial, irrelevant, or immaterial;

C. likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to the determination of the matter by a declaratory proceeding;

D. one in which the person requesting the declaratory order has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; or

E. otherwise excluded by state or federal law.

R600-1-5. Intervention.

A person may file a petition for intervention in a declaratory proceeding only if they deliver to the director a petition complying with all of the requirements of Section 63G-4-207 within 20 days of the director's receipt of the petition for a declaratory order filed under Section 63G-4-503(4).

R600-1-6. Petition Review and Disposition.

A. The agency will be governed by the provisions of Sections 63G-4-503(6) and (7).

B. Petitions seeking declaratory orders will be designated as informal adjudicative proceedings.

R600-1-7. Administrative Review.

A. Petitioner may seek reconsideration of a declaratory order by petitioning the director under the procedures of Section 63G-4-302.

KEY: labor commission, declaratory orders
1988 34A-1-104
Notice of Continuation April 5, 2013 63G-4-504 et seq.

R616. Labor Commission, Boiler and Elevator Safety.
R616-1. Coal, Gilsonite, or other Hydrocarbon Mining Certification.
R616-1-1. Authority and Purpose.

This rule is established pursuant to Section 40-2-401 et seq., which authorize the Labor Commission to enact rules governing the certification of individuals to work in the positions of underground mine foreman, surface mine foreman, fire boss, underground electrician or surface electrician in coal mines, gilsonite mines or other hydrocarbon mines in Utah.

R616-1-2. Definitions.

A. "Commission" means the Labor Commission created in Section 34A-1-103.

B. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

C. "Certification" means a person being judged competent and qualified by the Division for a mining position identified in Section 40-2-402 by meeting standards established by the Division and the examining panel pursuant to the requirements in Sections 40-2-401 and 402.

R616-1-3. Fees.

As required by Section 40-2-401, the Labor Commission shall establish and collect fees for certification sufficient to fund the Commission's miner certification process. The Commission's fees schedule shall be submitted to the Legislature for approval pursuant to Section 63J-1-301(2).

R616-1-4. Code of Federal Regulations.

The provisions of 30 CFR, sections 1 through 199, "Federal Underground Coal Mine Safety Standards," 11th ed., July 1, 1996, are hereby incorporated by reference.

R616-1-5. Initial Agency Action.

Division action either granting or denying an applicant's application for certification are classified as informal adjudicative actions pursuant to Section 63G-4-202 of the Utah Administrative Procedures Act and shall be adjudicated accordingly.

KEY: certification, labor, mining
May 23, 2007 34A-1-104
Notice of Continuation April 5, 2013 40-2-1 et seq.

R642. Natural Resources; Oil, Gas and Mining; Administration.
R642-200. Applicability.
R642-200-100. Applicability.

If access to any record under the control of the Division is governed by another authority, such as a court rule, another state statute, federal statute, or federal regulation, the provisions of Title R642 will not apply. In each of these cases where Title R642 does not apply, access will be controlled by the provisions of the specifically-applicable statute, rule, or regulation.

KEY: public records
1994 63G-2-101 et seq.
Notice of Continuation April 2, 2013

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-101. Restrictions on State Employees.
R645-101-100. Responsibility.

110. The Director will:

111. Provide advice, assistance, and guidance to Board members and all state employees required to file statements pursuant to R645-101-310;

112. Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in a coal mining or reclamation operation;

113. Resolve prohibited financial interest situations by ordering or initiating remedial action;

114. Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

115. Submit to the Director of the Office such statistics and information, as he or she may request, to enable preparation of the annual report to Congress;

116. Submit to the Director of the Office the initial listing and the subsequent annual listings of positions as required by R645-101-312 and R645-101-313.

117. Furnish a blank statement 45 days in advance of the filing date established by R645-101-321 to each Board member and state employee required to file a statement; and

118. Inform, annually, each Board member and state employee required to file a statement with the Director or such other official designated by Utah law or rule, or the name, address, and telephone number of the person whom they may contact for advice and counseling.

120. Division employees performing any duties or functions under the Act will:

121. Have no direct or indirect financial interest in coal mining and reclamation operations;

122. File a fully completed statement of employment and financial interest upon entrance to duty, and annually thereafter on the specified filing date; and

123. Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

130. Members of the Board will recuse themselves from proceedings which may affect their direct or indirect financial interests.

R645-101-200. Penalties.

210. Criminal Penalties. Criminal penalties are imposed by Section 40-10-7 of the Act which prohibits each employee of the Division who performs any function or duty under the Act from having a direct or indirect financial interest in any coal mining or reclamation operation. The Act provides that whoever knowingly violates the provisions of Section 40-10-7 of the Act will, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment of not more than one year or by both.

220. Failure to File Financial Statement. Any employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 40-10-7 of the Act and will be subject to removal from his or her position.

R645-101-300. Filing and Contents of Financial Reports.

310. Who will File:

311. Each Board member and any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director not to involve performance of any function or duty under the Act, or who is no longer employed by the Division at the time a filing is due, is not required to file a statement;

312. The Director will prepare a list of those positions within the Division that do not involve performance of any functions or duties under the Act. Only those employees who are employed in a listed organizational unit, or who occupy a listed position, will be exempted from the filing requirements of Section 40-10-7 of the Act;

313. The Director will annually review and update this position listing. For monitoring and reporting reasons, the listing must be submitted to the Director of the Office and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required will be submitted to the Director of the Office no later than September 30 of each year. The Director may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the State Program. Additions to, and deletions from, the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

320. When to File:

321. Board members and employees performing functions or duties under the Act will file annually on February 1 of each year, or at such other date as may be agreed to by the Director of the Office;

322. New employees hired, appointed, or transferred to perform functions or duties under the Act and any new Board members will be required to file at the time of entrance to duty;

323. New employees and new Board members are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee or Board member entrance date of December 1, 1978, would file a statement on that date. Because December 1 is within two months of February 1, the employee would not be required to file his or her next annual statement until February 1, 1980.

330. Where to File: The Director will file his or her statement with the Director of the Office. All other employees and Board members, as provided in R645-101-310, will file their statement with the Director or such other official as may be designated by Utah law or rule.

340. What to Report:

341. Each board member and employee will report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report will be on Office Form 705-1 as provided by the Division. The statement consists of three major parts:

341.100. A listing of all financial interests, including employment, security, real property, creditor, and other financial interests held during the course of the preceding year;

341.200. A certification that none of the listed financial interests represent a direct or indirect financial interest in a coal mining and reclamation operation except as specifically identified and described by the employee as part of the certificate; and

341.300. A certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

342. Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

342.100. Employment: Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment.

The board member or employee, his or her spouse, or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Division;

342.200. Securities: Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. A board member or employee is not required to report mutual funds, investment clubs, or regulated investment companies not specializing in coal mining and reclamation operations;

342.300. Real Property: Ownership, lease, royalty, or other interests or rights in lands or minerals. Board members or employees are not required to report lands developed and occupied for a personal residence; and

342.400. Creditors: Debts owed to business entities and nonprofit organizations. Board members or employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

343. Board member or employee certification, and, if applicable, a listing of exceptions.

343.100. The statement will provide for a signed certification by the board member or employee that to the best of his or her knowledge:

343.110. None of the listed financial interests represent an interest in a coal mining and reclamation operation except as specifically identified and described as exceptions by the board member or employee as part of the certificate; and

343.120. The information shown on the statement is true, correct, and complete.

343.200. A board member or employee is expected to:

343.210. Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and

343.220. Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

343.300. The exceptions shown in the board member or employee certification of the form must provide enough information for the Director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

343.310. List the financial interests;

343.320. Show the number of shares, estimated value or annual income of the financial interests; and

343.330. Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

343.400. Board members and employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in R645-101-210.

R645-101-400. Gifts and Gratuities.

410. Except as provided in R645-101-420, board members and employees will not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal company which:

411. Conducts, or is seeking to conduct, operations that are regulated by the Division; or

412. Has interests that may be substantially affected by the performance or nonperformance of the board member's or employee's official duty.

420. The prohibitions in R645-101-410 do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the board member or employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. A board member or employee may accept:

421. Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where a board member or employee may properly be in attendance; and

422. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value;

430. Board members or employees found guilty of violating the provisions of R645-101-400 will be subject to administrative remedies in accordance with existing or adopted Utah rules or policies.

R645-101-500. Resolving Prohibited Interests.

510. Actions to be taken by the Director:

511. Remedial action to effect resolution. If an employee has a prohibited financial interest, the Director will promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days;

512. Remedial action may include:

512.100. Reassignment of the employee to a position which performs no function or duty under the Act; or

512.200. Divestiture of the prohibited financial interest; or

512.300. Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

513. Reports of noncompliance. If 90 days after an employee is notified to take remedial action that the employee is not in compliance with the requirements of the State Program, the Director will report the facts of the situation to the Director of the Office who will determine whether action to impose the penalties prescribed by the Federal Act should be initiated. The report to the Director of the Office will include the original or a certified true copy of the employee's statement and any other information pertinent to the determination by the Director of the Office, including a statement of actions being taken at the time the report is made.

520. Actions to be taken by the Director of the Office:

521. Remedial action to effect resolution. Violations of rules under R645-101 by the Director will be cause for remedial action by the Governor of Utah, or other appropriate state official, based on recommendations from the Director of the Office on behalf of the Secretary of the U.S. Department of the Interior. The Governor, or other appropriate state official, based on recommendations from the Director of the Office on behalf of the Secretary of the U.S. Department of the Interior. The Governor, or other appropriate state official, will promptly advise the Director that remedial action which will resolve the prohibited interest is required within 90 days;

522. Remedial action should be consistent with the procedures prescribed for other Division employees in R645-101-512.

R645-101-600. Appeals Procedures.

Employees have the right to appeal an order for remedial action under R645-101-500, and will have 30 days to exercise this right before disciplinary action is initiated or the matter is referred to the Utah Attorney General for criminal prosecution.

610. Employees, other than the Director, may file their appeal, in writing, pursuant to the provision of the State Personnel Management Act (Section 67-19-1 et seq.).

620. The Director may file his or her appeal, in writing, with the Director of the Office who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.

KEY: reclamation, coal mines
1989 40-10-1 et seq
Notice of Continuation April 2, 2013

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-104. Protection of Employees.
R645-104-100. Protected Activity.

110. No person will discharge or in any other way discriminate against, cause to be fired, or discriminate against any employee because that employee or his or her authorized representative has:

111. Filed, instituted, or caused to be filed or instituted any proceedings under the State Program by:

111.100. Reporting alleged violations or dangers to the Secretary, the Board, the Division, the employer or his or her authorized representative;

111.200. Requesting an inspection or investigation; or

111.300. Taking any other action which may result in a proceeding under the State Program;

112. Made statements, testified, or is about to do so:

112.100. In any informal or formal adjudicatory proceeding;

112.200. In any informal conference proceeding;

112.300. In any rulemaking proceeding;

112.400. In any investigation, inspection, or other proceeding under the State Program; or

112.500. In any judicial proceeding under the State Program; and

113. Has exercised on his or her own behalf, or on behalf of others, any right granted by the Act.

120. Each employer conducting operations which are regulated under this Act will, within 30 days from the effective day of these rules, provide a copy of R645-104 to all current employees and to all new employees at the time of their hiring.

R645-104-200. Procedures for Filing an Application for Review of Discrimination.

210. Who May File. Any employee, or his or her authorized representative, who believes that he or she has been discriminated against by any person in violation of R645-104-110 may file an application for review. For the purpose of the R645 Rules, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he or she has been discriminated against and the facts surrounding the alleged discrimination.

220. Where to File. The employee, or authorized representative, may file the application for review with the Division. The Division will maintain a log of all filings.

230. Time for Filing. The employee, or his or her authorized representative, will file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed:

231. On the date delivered, if delivered in person, to the Division; or

232. On the date mailed to the Division.

240. Running of the Time for Filing. The time for filing begins when the employee knows, or has reason to know, of the alleged discriminatory activity.

R645-104-300. Investigation and Conference.

310. Within seven days after receipt of any application for review, the Division will mail a copy of the application for review to the person alleged to have caused the discrimination, will file the application for review with the Board, and will notify the employee and the alleged discriminating person that the Division will investigate the complaint. The alleged discriminating person may file a response to the application for review within ten days after he or she receives the copy of the application for review. The response will specifically admit, deny, or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge, in which case, he or she will so state.

320. The Division will initiate an investigation of the alleged discrimination within 30 days after receipt of the application for review. The Division will complete the investigation within 60 days of the date of the receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Division will notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

330. Within seven days after completion of the investigation, the Division will invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee, and the representative of the Division. If the Division concludes, on the basis of a subsequent investigation, that any party to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Division will take appropriate action to obtain compliance with the agreement.

340. Following the investigation, and any informal conference held, the Division will complete a report of investigation which will include a summary of the results of the conference. Copies of this report will be available to the parties in the case.

R645-104-400. Request for Hearing.

410. If the Division determines that a violation of R645-104 has probably occurred and was not resolved at an informal conference, the Director will request a hearing on the employee's behalf before the Board within ten days of the scheduled informal hearing. The parties will be notified of the determination. If the Director declines to request a hearing, the employee will be notified within ten days of the scheduled informal conference and informed of his or her right to request a hearing on their own behalf.

420. The employee may request a hearing with the Board after 60 days have elapsed from the filing of his or her application.

R645-104-500. Formal Adjudicatory Proceedings.

510. Formal adjudication of a complaint filed under R645-104 will be conducted before the Board under R641 Rules.

520. A hearing will be held as promptly as possible, consistent with the opportunity for discovery provided for under the R641 Rules.

530. Upon a finding of violation of R645-104-100, the Board will order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his or her former position with compensation. At the request of the employee, a sum equal to the aggregate amount of all costs and expenses including attorneys' fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings will be assessed against the person committing the violation.

540. On or after ten days after filing an application for review under R645-104, the employee may seek temporary relief from the Board under the R641 Rules.

KEY: reclamation, coal mines
1989 40-10-1 et seq.
Notice of Continuation April 2, 2013

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-401. Inspection and Enforcement: Civil Penalties.
R645-401-100. Information on Civil Penalties.

110. Objectives. Civil penalties are assessed under UCA 40-10-20 of the State Program and R645-401 to deter violations and to ensure maximum compliance with the terms and purposes of the State Program on the part of the coal mining industry.

120. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R645-401 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

R645-401-200. When Penalty Will Be Assessed.

210. The assessment officer will assess a penalty for each cessation order.

220. The assessment officer will assess a penalty for each notice of violation, if the violation is assigned 51 points or more under the point system described in R645-401-300 and R645-401-400.

230. The assessment officer may assess a penalty for each notice of violation assigned 50 points or less under the point system described in R645-401-300 and R645-401-400. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R645-401-310.

R645-401-300. Point System for Penalties.

310. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

311. The operator's history of previous violations at the particular coal mining and reclamation operation, regardless of whether any led to a civil penalty assessment. Special consideration will be given to violations contained in or leading to a cessation order. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R645-401-321.100 or R645-401-321.200.

312. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area.

313. The degree of fault of the operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

314. The operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement. Consideration will also be given to whether the operator gained any economic benefit as a result of a failure to comply.

320. Assessment of Points.

321. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular coal exploration or coal mining and reclamation operation. Points will be assigned as follows:

321.100. A violation will not be counted, if the notice or order is the subject of pending administrative or judicial review, or if the time to request such review, or to appeal any administrative or judicial decision has not expired, and thereafter, it will be counted for only one year;

321.200. No violation for which the notice or order has been vacated will be counted; and

321.300. Each violation will be counted without regard to whether it led to a civil penalty assessment.

322. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

322.100. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following schedule:

TABLE

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

322.200. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

322.300. Alternative to R645-401-322.100 and R645-401-322.200 for an Administrative Hindrance Violation. In the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R645-401-322.100 and R645-401-322.200, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

323. Degree of Fault.

323.100. The assessment officer will assign up to 30 points based on the degree of fault of the permittee in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

323.110. A violation which occurs through no fault of the operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

323.120. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault; Fault means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the State Program due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the State Program due to indifference, lack of diligence, or lack of reasonable care; and

323.130. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

323.200. In calculating points to be assigned for degree of fault, the acts of all persons working on the coal exploration or coal mining and reclamation operation site will be attributed to the permittee, unless that permittee establishes that they were acts of deliberate sabotage.

324. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee. Points will be assigned as follows:

324.100. Easy Abatement Situation. An easy abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

TABLE

DEGREE OF GOOD FAITH	POINTS
Immediate Compliance	-11 to -20
Rapid Compliance	- 1 to -10
Normal Compliance	0

324.200. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee does not have the resources at hand to achieve compliance of the violated standard.

TABLE

DEGREE OF GOOD FAITH	POINTS
Rapid Compliance	-11 to -20
Normal Compliance	- 1 to -10
Extended Compliance	0

325. Definition of Compliance.

325.100 Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

325.200. Rapid Compliance requires evidence that the permittee used diligence to abate the violation.

325.300. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

325.400. Extended Compliance means that the permittee took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

326. The Effect on the Operator's Ability to Continue in Business. Initially, it will be presumed that the operator's ability to continue in business will not be affected by the order of assessment. The operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee's ability to continue in business. A reduction of the penalty or a special payment plan may be ordered if the information provided by the operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee's ability to continue in business or will create undue hardship on the permittee's operation.

330. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R645-401-320 to a dollar amount, according to the following schedule:

TABLE

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840

R645-401-400. Assessment of Separate Violations for Each Day.

410. The assessment officer may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the assessment officer will consider the factors listed in R645-401-300 and may consider the extent to which the permittee gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days, and which is assigned more than 64 points under R645-401-320, the assessment officer will assess a civil penalty for a minimum of two separate days.

420. Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than $750.00 will be assessed for each day during which such failure continues, except that, if the permittee initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

421. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the State Program, after determination that the permittee will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date on which the board issues a final order; and

422. If the permittee initiates review proceedings under the State Program with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the State Program, the daily assessment of a penalty will not be made for any period before entry of a final order by the court.

430. Such penalty for the failure to abate the violation will not be assessed for more than 30 days for each violation. If the permittee has not abated the violation within the 30-day period, the Division will within 30 days appeal such noncompliance to the Board for resolution under Subsections 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2) of the Act, or by other appropriate means.

R645-401-500. Waiver of Use of Formula to Determine Civil Penalty.

510. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R645-401-330 to set the civil penalty, if they determine that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the assessment officer will not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the State Program or any condition of any permit or exploration approval. The basis for every waiver will be fully explained and documented in the records of the case.

520. If the assessment officer waives the use of the formula, he or she will use the criteria set forth in R645-401-320 to determine the appropriate penalty. When the assessment officer has elected to waive the use of the formula, he or she will give a written explanation of the basis for the assessment made to the permittee.

R645-401-600. Procedures for Assessment of Civil Penalties - Proposed Assessment.

610. Within 15 days of service of a notice or order, the permittee may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

620. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee, by certified mail, within 30 days of the issuance of the notice or order.

621. If the mail is tendered at the address of that permittee set forth in the sign required under R645-301-521.200 or at any address at which that permittee is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R645-401-620 will be deemed to have been complied with upon such tender.

622. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee:

622.100. Proves actual prejudice as a result of the delay; and

622.200. Makes a timely objection to the delay.

630. Unless an assessment conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R645-401-620, within 30 days after the date the violation is abated.

R645-401-700. Procedures for Informal Assessment Conference.

710. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the violator.

720. Informal Assessment Conference Scheduling and Findings.

721. The Division will assign an assessment conference officer to hold assessment conferences. The assessment conference will be informal. The assessment conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee proves actual prejudice as a result of the delay.

722. The Division will post notice of the time and place of the conference at all Division offices at least five days before the conference. Any person will have a right to attend and participate in the conference.

723. The assessment conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

723.100. Settle the issues, in which case a settlement agreement will be prepared and signed by the assessment conference officer on behalf of the Division and by the permittee; or

723.200. Affirm, raise, lower, or vacate the penalty.

730. The assessment conference officer will promptly serve the permittee with a notice of his or her action in the manner provided in R645-401-620, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

740. Informal Conference Settlement Agreement.

741. If a settlement agreement is entered into, the permittee will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

742. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R645-401-723.200 within 30 days from the date of the rescission.

750. The assessment conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee is not diligently working toward resolution of the issues.

760. At formal review proceedings before the Board, no evidence as to statements made or evidence produced by one party at an assessment conference will be introduced as evidence by another party or to impeach a witness.

R645-401-800. Requests for Formal Hearing.

810. A permittee charged with a violation may contest the proposed penalty or the fact of the violation by submitting (a) a petition to the Board and (b) an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Division (to be held in escrow as provided in R645-401-820) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.

820. The Division will transfer all funds submitted under R645-401-810 to an escrow fund pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R645-401-920 or R645-401-930.

830. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of the procedural rules of the Board (R641 Rules). The fact of the violation may not be contested if the fact has been finally decided before the Board under R645-400-360.

R645-401-900. Final Assessment and Payment of Penalty.

910. If the permittee fails to request a hearing as provided in R645-401-810, the proposed assessment will become a final order of the Division and the penalty assessed will become due

and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under UCA 40-10-20(3)(e).

920. If any party requests judicial review of a final order of the Board the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R645-401-930, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.

930. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R645-401, the Division will within 30 days of receipt of the order refund to the permittee all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the legal rate applicable as provided in section 15-1-1, UCA.

940. If the review results in an order increasing the penalty, the permittee will pay the difference to the Division within 15 days after the order is received by such permittee.

KEY: reclamation, coal mines
February 6, 2004 40-10-1 et seq.
Notice of Continuation April 2, 2013

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-6. Inspection and Enforcement: Division Authority and Procedures.
R647-6-101. General Information on Authority and Procedures.

(1) Enforcement Authority. Nothing in the Utah Mined Land Reclamation Act will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-8-8, 40-8-9 and 40-8-9.1 of the Utah Mined Land Reclamation Act.

(2) Inspection Program. The Division will conduct inspections of each mining operation and reclamation under its jurisdiction for the purpose of enforcing the provisions of Title 40, Chapter 8.

2.11. Division representatives shall be allowed to enter upon and through any minerals mining operation and reclamation without advance notice. Division Representatives need to check in on site or make an attempt to contact the permittee or operator, if available, prior to proceeding through the site.

2.12. Division representatives shall be allowed to inspect any monitoring equipment or method of exploration, operation or reclamation and have access to and may copy any records required under the Utah Mined Land Reclamation Act.

(3) Compliance Conference.

3.11. A permittee or operator may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice at any mining operation and reclamation. Any such conference will not constitute an inspection within the meaning of Section 40-8-9 and R647-6-101.2.

3.12. The Division may accept or refuse any request to conduct a compliance conference under R647-6-101.3.11. A conference will be considered an inspection if a condition or practice exists which is described in R647-6-102.1.11.111 or 1.11.112.

3.13. The authorized representative at any compliance conference will review such conditions and practices in order to advise whether any such condition or practice is, or may become a violation of any requirement of the Utah Mined Land Reclamation Act or any applicable permit or exploration approval.

3.14. Neither the holding of a compliance conference under this section nor any statement given by the authorized representative at such a conference will affect:

3.14.111. Any rights or obligations of the Division or of the permittee or operator with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

3.14.112. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R647-6-102. Provisions of State Enforcement.

1. Cessation Orders.

1.11. The Division will immediately order a cessation of mining operations and reclamation or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the Utah Mined Land Reclamation Act, or any condition of a permit under the Utah Mined Land Reclamation Act, which:

1.11.111. Creates an imminent danger to the health or safety of the public; or

1.11.112. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

1.12. Mining operations and reclamation conducted by any person without a valid permit constitute a condition or practice described in R647-6-102.1.111 or 1.11.112.

1.13. If the cessation ordered under R647-6-102.1.11 will not completely abate the conditions described in R647-6-102.1.11.111 or 1.11.112 in the most expeditious manner physically possible, the Division will impose affirmative obligations on the permittee or operator to abate the violation. The order will specify the time by which abatement will be accomplished.

1.14. When a notice of violation has been issued under R647-6-102.2 and the permittee or operator fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of mining operations and reclamation, or of the portion relevant to the violation. A cessation order issued under R647-6-102.1.14 will require the permittee or operator to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

1.15. A cessation order issued under R647-6-102.1.11 or R647-6-102.1.14 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

1.15.111. The nature of the violation;

1.15.112. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

1.15.113. The time established for abatement, if appropriate, including the time for meeting any interim steps;

1.15.114. A reasonable description of the portion of the mining operation and reclamation to which it applies; and

1.15.115. That the order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

1.16. Reclamation and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided.

1.17. The Division may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee or operator.

1.18. The Division will terminate a cessation order by written notice to the permittee or operator, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations under R647-7.

2. Notices of Violation.

2.11. When on the basis of any Division inspection the Division determines that there exists a violation of the Utah Mined Land Reclamation Act or any condition of a permit required by the Utah Mined Land Reclamation Act, which does not create an imminent danger or harm for which a cessation order must be issued under R647-6-102.1, the Division will issue a notice of violation to the permittee or operator fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

2.12. A notice of violation issued under R647-6-102.2 will be in writing, signed by the authorized representative of the Division, and will set forth with reasonable specificity:

2.12.111. The nature of the violation;

2.12.112. The remedial action required, which may include interim steps;

2.12.113. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

2.12.114. A reasonable description of the portion of the mining operation or reclamation to which it applies.

2.13. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet

the time previously set was not caused by lack of diligence on the part of the permittee or operator. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee or operator that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R647-6-102.2.16. An extended abatement date pursuant to this section will not be granted when the permittee or operator's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee or operator in completing the remedial action required.

2.14. If the permittee or operator fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R647-6-102.1.14.

2.15. The Division will terminate a notice of violation by written notice to the permittee or operator, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Division to assess civil penalties for those violations under R647-7.

2.16. Circumstances which may qualify a mining operation and reclamation for an abatement period of more than 90 days are:

2.16.111. Where good cause is shown by the permittee or operator;

2.16.112. Where climatic conditions preclude complete abatement within 90 days;

2.16.113. Where due to climatic conditions, abatement within 90 days would clearly cause more environmental harm than it would prevent; or

2.16.114. Where the permittee's or operator's action to abate the violation within 90 days would violate safety standards established by the Mine Safety and Health Act of 1977.

2.17. Other requirements on abatement times extended beyond 90 days.

2.17.111. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

2.17.112. The permittee or operator will have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under R647-6-102.2.16 and R647-6-102.2.17.

2.17.113. Any determination made under R647-6-102.2.13 will contain a right of appeal pursuant to R647-5.

3. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

3.11. A notice of violation, cessation order, or order to show cause will be served on the permittee or operator promptly after issuance by one of the following methods:

3.11.111. Personal service, in accordance with the Utah Rules of Civil Procedure. Service shall be effective on the date of personal service.

3.11.112. Delivery by United States mail or by courier service, provided the person being served signs a document indicating receipt. Service shall be complete on the date the receipt is signed.

3.11.113. First posting a copy of the notice at a conspicuous location at the mine site or offices of the place of violation, and thereafter by personally delivering or mailing a copy by certified mail to the permittee or operator at the last address provided to the Division. Service shall be complete upon personal delivery or three days after the date of mailing.

3.12. Service on the permittee or operator shall be sufficient if service is made upon:

3.12.111. an officer of a corporation,

3.12.112. the person designated by law for service of process, or the registered agent for the corporation,

3.12.113. an owner, or partner of an entity other than a corporation, or

3.12.114. a person designated in writing by the permittee or operator as a person authorized to receive notice from the Division for matters pertaining to the mining operation and reclamation.

3.13. Proof of Service.

3.13.111. Proof of personal service shall be made in accordance with the provisions of the Utah Rules of Civil Procedure,

3.13.112. Proof of service by certified mail or courier shall be made by obtaining a copy of the receipt signed by the recipient.

3.13.113. Proof of posting, or personal delivery may be made by a signed written statement of the person effecting posting, or personal delivery stating the date, time, and place of posting. In addition, if personal delivery, the person to whom the notice was delivered.

4. Stop Work Conference.

4.11. Except as provided in R647-6-102.4.12 a notice of violation or cessation order which requires cessation of mining, will expire within 30 days after it is served unless a Stop Work Conference, under the rules of informal process (R645-5), has been held within that time. The Stop Work Conference will be held within 5 days of request, at or reasonably close to the mine site so that the site may be viewed during the conference or at any other location acceptable to the Division and the permittee or operator. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division and permittee or operator. Expiration of a notice or order will not affect the Division's right to assess civil penalties for the violations mentioned in the notice or order under R647-7.

4.12. A notice of violation or cessation order will not expire as provided in R647-6-4.11, if the condition, practice or violation in question has been abated or if the Stop Work Conference has been waived, or if, with the consent of the permittee or operator, the conference is held upon agreement later than 30 days after the notice or order was served. For purposes of R647-6-4.12:

4.12.111. The conference will be deemed waived if the permittee or operator:

4.12.111.A. Is informed, by written notice served in the manner provided in R647-6-102.3, that he or she will be deemed to have waived a conference unless he or she requests one within 30 days after service of the notice; and

4.12.111.B. Fails to request a conference within that time;

4.12.112. The written notice referred to in R647-6-4.12.111.A., will be served no later than five days after the notice or order is served on the permittee or operator; and

4.12.113. The permittee or operator will be deemed to have consented to an extension of the time for holding the conference if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

4.13. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the Stop Work Conference to the permittee or operator.

4.14. The Division will also post notice of the conference at the Division office closest to the mine site.

4.15. A Stop Work Conference will be conducted by a representative of the Division who may accept oral or written arguments and any other relevant information from any person attending.

4.16. Within five days after the close of the conference, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to the permittee or operator.

4.17. The granting or waiver of a conference will not

affect the right of any person to have a conference in R647-7-106 or to have a formal review under Subsection 40-8-9(5). No evidence as to statements made or evidence produced at a Stop Work Conference will be introduced as evidence or to impeach a witness at formal review proceedings of that matter before the Board.

4.17.111. Any order or decision issued by the Division as a result of a conference as provided for under Subsection 40-8-9(5) and R647-6-102 including an order upholding the cessation order shall be a modification of the cessation order.

5. Inability to Comply.

5.11. No cessation order or notice of violation issued under R647-6 may be vacated because of inability to comply.

5.12. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R647-7 and of the duration of the suspension of a permit under R647-6.

KEY: minerals reclamation
June 1, 2004 40-8-1 et seq.
Notice of Continuation April 2, 2013

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-7. Inspection and Enforcement: Civil Penalties.
R647-7-101. Information on Civil Penalties.

1. Objectives. Civil penalties are assessed under Section 40-8-9.1 of the Utah Mined Land Reclamation Act and R647-7 to deter violations and to ensure maximum compliance with the terms and purposes of the Utah Mined Land Reclamation Act on the part of the minerals mining industry.

2. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R647-7 to determine whether a civil penalty will be assessed and the amount of the penalty.

R647-7-102. Penalty To Be Assessed.

1. The assessment officer will assess a penalty for each cessation order.

2. The assessment officer may assess a penalty for each notice of violation under the point system described in R647-7-103. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R647-7-103.

3. Within 15 days of service of a notice of violation or cessation order, the permittee or operator may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

R647-7-103. Point System for Penalties.

1. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

1.11. The permittee or operator's history of previous violations at the particular mining operation and reclamation, regardless of whether any led to a civil penalty assessment. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R647-7-103.2.11.111 or R647-7-103.2.11.112.

1.12. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit area.

1.13. The degree of fault of the permittee or operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

1.14. The permittee or operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement.

1.15. Consideration will also be given to whether the permittee or operator gained any economic benefit as a result of a failure to comply.

2. Assessment of Points.

2.11. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular mining operation and reclamation. Points will be assigned as follows:

2.11.111. A violation will not be counted, if the notice or order is the subject of pending administrative or judicial review, or if the time to request such review, or to appeal any administrative or judicial decision has not expired, and thereafter, it will be counted for only three years;

2.11.112. No violation for which the notice or order has been vacated will be counted; and

2.11.113. Each violation will be counted without regard to whether it led to a civil penalty assessment.

2.12. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

2.12.111. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following table:

TABLE 1

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

2.12.112. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

2.12.113. Alternative to R647-7-103.2.12.111 and R647-7-103.2.12.112, in the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R647-7-103.2.12.111 and R647-7-103.2.12.112, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

2.13. Degree of Fault.

2.13.111. The assessment officer will assign up to 30 points based on the degree of fault of the permittee or operator in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

2.13.111.A. A violation which occurs through no fault of the permittee or operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

2.13.111.B. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault. Fault means the failure of a permittee or operator to prevent the occurrence of any violation of his or her permit or any requirement of the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care; and

2.13.111.C. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

2.13.112. In calculating points to be assigned for degree of fault, the acts of all persons working at the mining operations on the mine site will be attributed to the permittee or operator, unless that permittee or operator establishes that they were acts of deliberate sabotage or acts of a third-party otherwise authorized to occupy the same lands.

2.14. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee or operator. Points will be assigned as follows:

2.14.111. Easy Abatement Situation. An easy abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

TABLE 2

DEGREE OF GOOD FAITH	POINTS
Immediate Compliance	-11 to -20
Rapid Compliance	- 1 to -10
Normal Compliance	0

2.14.112. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee or operator does not have the resources at hand to achieve compliance of the violated standard.

TABLE 3

DEGREE OF GOOD FAITH	POINTS
Rapid Compliance	-11 to -20
Normal Compliance	- 1 to -10
Extended Compliance	0

2.15. Definition of Compliance.

2.15.111. Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

2.15.112. Rapid Compliance requires evidence that the permittee or operator used diligence to abate the violation.

2.15.113. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

2.15.114. Extended Compliance means that the permittee or operator took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

2.16. The Effect on the permittee or operator's Ability to Continue in Business. Initially, it will be presumed that the permittee or operator's ability to continue in business will not be affected by the order of assessment. The permittee or operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee or operator's ability to continue in business. A reduction of the penalty, work in kind, or a special payment plan may be ordered if the information provided by the permittee or operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee or operator's ability to continue in business.

3. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R647-7-103.3 to a dollar amount, according to the following table:

TABLE 4

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770
28	880
29	990
30	1,100
31	1,210
32	1,320
33	1,430
34	1,540
35	1,650
36	1,760
37	1,870
38	1,980
39	2,090
40	2,200
41	2,310
42	2,420
43	2,530
44	2,640
45	2,750
46	2,860
47	2,970
48	3,080
49	3,190
50	3,300
51	3,410
52	3,520
53	3,630
54	3,740
55	3,850
56	3,960
57	4,070
58	4,180
59	4,290
60	4,400
61	4,510
62	4,620
63	4,730
64	4,840
65	4,950

4. Whenever a violation contained in a cessation order has not been abated, a civil penalty of not less than $750.00 will be assessed for each day during which such failure continues, except that, if the permittee or operator initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

4.11. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the Utah Mined Land Reclamation Act, after determination that the permittee or operator will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date specified in the Board final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

4.12. If the permittee or operator initiates review proceedings under the Utah Mined Land Reclamation Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the Utah Mined Land Reclamation Act, the extended period permitted for abatement will not end until the date specified in the court final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

R647-7-104. Waiver of Use of Formula to Determine Civil Penalty.

1. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R647-7-103 to set the civil penalty, if they determine that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

R647-7-105. Procedures for Assessment of Civil Penalties - Proposed Assessment.

1. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee or operator, by certified mail, within 30 days of the issuance of the notice or

order.

1.11. If the mail is tendered at the address of the permittee or operator set forth in the permit application or at any address at which that permittee or operator is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R647-7-105.1 will be deemed to have been complied with upon such tender.

1.12. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee or operator:

1.12.111. Proves actual prejudice as a result of the delay; and

1.12.112. Makes a timely objection to the delay.

2. Unless a conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R647-7-105.1, within 30 days after the date the violation is abated.

R647-7-106. Procedures for Informal Conference.

1. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee or operator, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the permittee or operator.

2. Informal Conference Scheduling and Findings.

2.11. The Division will assign a conference officer to hold conferences. The conference will be informal. The conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee or operator proves actual prejudice as a result of the delay.

2.12. The Division will provide notice of the time and place of the conference to the operator or permittee and post notice of the conference at the main Division office at least five days before the conference. Any person may attend the conference.

2.13. The conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

2.13.111. Settle the issues, in which case a settlement agreement will be prepared and signed by the conference officer on behalf of the Division and by the permittee or operator;

2.13.112. Affirm, raise, lower, or vacate the penalty; or

2.13.113. Affirm, deny, modify or vacate the violation.

3. The conference officer will promptly serve the permittee or operator with a notice of his or her action in the manner provided in R647-7-105.1, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

4. Informal Conference Settlement Agreement.

4.11. If a settlement agreement is entered into, the permittee or operator will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

4.12. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R647-7-106.2.13.112 within 30 days from the date of the rescission.

5. The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee or operator is not diligently working toward resolution of the issues.

6. At formal review proceedings of the matter before the Board, no evidence as to statements made or evidence produced by one party at a conference will be introduced as evidence by another party or to impeach a witness.

R647-7-107. Requests for Formal Hearing.

1. A permittee or operator charged with a violation may contest the proposed penalty or the fact of the violation by submitting: (a) a petition to the Board; and (b) an amount equal to the proposed penalty (or, if a conference has been held, the reassessed or affirmed penalty) to the Division (to be held in escrow as provided in R647-7-107.2) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.

2. The Division will transfer all funds submitted under R647-7-107.1 to an escrow account pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R647-7-108.2 or R647-7-108.3.

3. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of R641, rules of practice and procedure before the Board.

R647-7-108. Final Assessment and Payment of Penalty.

1. If the permittee or operator fails to request a hearing as provided in R647-7-107, the proposed assessment or reassessment will become a final order of the Division and the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under Subsection 40-8-9.1(3)(e).

2. If any party requests judicial review of a final order of the Board, the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R647-7-108.3, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.

3. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R647-7, the Division will within 30 days of receipt of the order refund to the permittee or operator all or part of the escrowed amount and interest accumulated, if any.

4. If the review results in an order increasing the penalty, the permittee or operator will pay the difference to the Division within 15 days after the order is received by such permittee or operator.

KEY: minerals reclamation
June 1, 2004 **40-8-1 et seq.**
Notice of Continuation April 2, 2013

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-8. Inspection and Enforcement: Individual Civil Penalties.

R647-8-101. Information on Individual Civil Penalties.

1. The rules in R647-8 provide guidance to exercise the authority set forth in Subsection 40-8-9.1(6).

2. Individual civil penalties will be assessed by a Division-appointed assessment officer using the process described in R647-8.

R647-8-102. When an Individual Civil Penalty May Be Assessed.

1. Except as provided in R647-8-102.2, the assessment officer may assess an individual civil penalty against any corporate director, officer, or agent of a permittee or operator, or any other person who may be liable under Section 40-8-9.1 who knowingly and willfully authorized, ordered or carried out a violation, failure, or refusal.

2. The assessment officer will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee or operator until a cessation order has been issued by the Division to the corporate permittee or operator for the violation, and the cessation order has remained unabated for 30 days.

R647-8-103. Amount of the Individual Civil Penalty.

1. In determining the amount of an individual civil penalty assessed under R647-8-102, the assessment officer will consider the criteria specified in Section 40-8-9.1, including:

1.11. The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular mining operation and reclamation;

1.12. The seriousness of the violation failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and

1.13. The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure, or refusal.

2. The individual civil penalty will not exceed $5,000 for each violation. Each day of continuing violation may be deemed a separate violation and the assessment officer may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the Board, until abatement or compliance is achieved.

R647-8-104. Procedure for Assessment of Individual Civil Penalty.

1. Notice. The Division will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

2. Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Division 30 days after service upon the individual unless:

2.11. The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Board; or

2.12. The Division and the individual or responsible corporate permittee or operator agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

3. Service. Service of notice under R647-8-104 will satisfy the standard of R641, concerning the rules of practice and procedure before the Board.

R647-8-105. Payment of Penalty.

1. No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty will be due upon issuance of the final order.

2. Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with R641, the penalty will be due upon issuance of a final Board order affirming, increasing, or decreasing the proposed penalty.

3. Abatement agreement. Where the Board and the corporate permittee, operator, or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Board stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

4. Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties will result in referral to the Utah Attorney General for appropriate collection action.

KEY: minerals reclamation
June 1, 2004 40-8-1 et seq.
Notice of Continuation April 2, 2013

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-1. Oil and Gas Definitions.
R649-1-1. Definitions.

"Authorized Agent" means a representative of the director as authorized by the board.

"Aquifer" means a geological formation including a group of formations or part of a formation that is capable of yielding a significant amount of water to a well or spring.

"Artificial Liner" means a pit liner made of material other than clay or other in-situ material and which meets the requirements of R649-9-3, Permitting of Disposal Pits.

"Barrel" means 42 (US) gallons at 60 degrees Fahrenheit at atmospheric pressure.

"Board" means the Board of Oil, Gas and Mining.

"Carrier, Transporter or Taker" means any person moving or transporting oil or gas away from a well or lease or from any pool.

"Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

"Central Disposal Facility" means a facility that is used by one or more producers for disposal of exempt E and P wastes and for which the operator of the facility receives no monetary remuneration, other than operating cost sharing.

"Class II Injection Well" means a well that is used for:

1. The disposal of fluids that are brought to the surface in connection with conventional oil or natural gas production and that may be commingled with wastewater produced from the operation of a gas plant that is an integral part of production operations, unless that wastewater is classified as a hazardous waste at the time of injection, or

2. Enhanced recovery of oil or gas, or

3. Storage of hydrocarbons that are liquids at standard temperature and pressure conditions.

"Closed System" means but is not limited to, the use of a combination of solids control equipment (i.e., shale shakers, flowline cleaners, desanders, desilters, mud cleaners, centrifuges, agitators, and necessary pumps and piping) incorporated in a series on the rig's steel mud tanks, or a self contained unit that eliminates the use of a reserve pit for the purpose of dumping and dilution of drilling fluids for the removal of entrained drill solids. A closed system for the purpose of these rules may with Division approval include the use of a small pit to receive cuttings, but does not include the use of trenches for the collection of fluids of any kind.

"Coalbed Methane" means natural gas that is produced, or may be produced, from coalbeds and rock strata associated with the coalbed.

"Commercial Disposal Facility" means a disposal well, pit or treatment facility whose owner(s) or operator(s) receives compensation from others for the temporary storage, treatment, and disposal of produced water, drilling fluids, drill cuttings, completion fluids, and any other exempt E and P wastes, and whose primary business objective is to provide these services.

"Completion of a Well" means that the well has been adequately worked to be capable of producing oil or gas or that well testing as required by the division has been concluded.

"Confining Strata" refers to a body of material that is relatively impervious to the passage of liquids or gases and that occurs either below, above, or lateral to a more permeable material in such a way that it confines or limits the movement of liquids or gases that may be present.

"Correlative Rights" means the opportunity of each owner in a pool to produce his just and equitable share of the oil and gas in the pool without waste.

"Cubic Foot" of gas means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 psia and a standard temperature base of 60 degrees Fahrenheit.

"Day" means a period of 24 consecutive hours.

"Development Wells" means all oil and gas producing wells other than wildcat wells.

"Director" means the executive and administrative head of the division.

"Disposal Facility" means an injection well, pit, treatment facility or combination thereof that receives E and P Wastes for the purpose of disposal. This includes both commercial and noncommercial facilities.

"Disposal Pit" means a lined or unlined pit approved for the disposal and/or storage of E and P Wastes.

"Division" means the Division of Oil, Gas and Mining.

"Drilling Fluid" means a circulating fluid usually called mud, that is introduced in a drill hole to lubricate the action of the rotary bit, remove the drilling cuttings, and control formation pressures.

"E and P Waste" means (Exploration And Production Waste), and is defined those wastes resulting from the drilling of and production from oil and gas wells as determined by the Environmental Protection Agency (EPA), prior to January 1, 1992, to be exempt from Subtitle C of the Resource Conservation and Recovery Act (RCRA).

"Emergency Pit" means a pit used for containing fluids at an operating well during an actual emergency or for a temporary period of time.

"Enhanced Recovery" means the process of introducing fluid or energy into a pool for the purpose of increasing the recovery of hydrocarbons from the pool.

"Enhanced Recovery Project" means the injection of liquids or hydrocarbon or non-hydrocarbon gases directly into a reservoir for the purpose of augmenting reservoir energy, modifying the properties of the fluids or gases in the reservoir, or changing the reservoir conditions to increase the recoverable oil, gas, or oil and gas through the joint use of two or more well bores.

"Entity" means a well or a group of wells that have identical division of interest, have the same operator, produce from the same formation, have product sales from a common tank, LACT meter, gas meter, or are in the same participating area of a properly designated unit. Entity number assignments are made by the division in cooperation with other state government agencies.

"Field" means the general area underlaid by one or more pools.

"Gas" means natural gas or natural gas liquids or other gas or any mixture thereof defined as follows:

1. "Natural Gas" means those hydrocarbons, other than oil and other than natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and are produced and recovered at the wellhead in gaseous form. Natural gas includes coalbed methane.

2. "Natural Gas Liquids" means those hydrocarbons initially in reservoir natural gas, regardless of gravity, that are separated in gas processing plants from the natural gas as liquids at the surface through the process of condensation, absorption, adsorption, or other methods.

3. "Other Gas" means hydrogen sulfide (H_2S), carbon dioxide (CO_2), helium (He), nitrogen (N), and other nonhydrocarbon gases that occur naturally in the gaseous phase in the reservoir or are injected into the reservoir in connection with pressure maintenance, gas cycling, or other secondary or enhanced recovery projects.

"Gas-Oil Ratio" means the ratio of the number of cubic feet of natural gas produced to the number of barrels of oil concurrently produced during any stated period. The term GOR is synonymous with gas-oil ratio.

"Gas Processing Plant" means a facility in which liquefiable hydrocarbons are removed from natural gas, including wet gas or casinghead gas, and the remaining residue gas is conditioned for delivery for sale, recycling or other use.

"Gas Well" means any well capable of producing gas in substantial quantities that is not an oil well.

"Ground Water" means water in a zone of saturation below the ground surface.

"Hearing" means any matter heard before the board or its designated hearing examiner.

"Horizontal Well" means a well bore drilled laterally at an angle of at least eighty (80) degrees to the vertical or with a horizontal projection exceeding one hundred (100) feet measured from the initial point of penetration into the productive formation through the terminus of the lateral in the same common source of supply.

"Illegal Oil or Illegal Gas" means oil or gas that has been produced from any well within the state in violation of Chapter 6 of Title 40, or any rule or order of the board.

"Illegal Product" means any product derived in whole or in part from illegal oil or illegal gas.

"Incremental Production" means that part of production that is achieved from an enhanced recovery project that would not have economically occurred under the reservoir conditions existing before the project and that has been approved by the division as incremental production.

"Injection or Disposal Well" means any Class II Injection Well used for the injection of air, gas, water or other substance into any underground stratum.

"Interest Owner" means a person owning an interest (working interest, royalty interest, payment out of production, or any other interest) in oil or gas, or in the proceeds thereof.

"Load Oil" means any oil or liquid hydrocarbon that is used in any remedial operation in an oil or gas well.

"Log or Well Log" means the written record progressively describing the strata, water, oil or gas encountered in drilling a well with such additional information as is usually recorded in the normal procedure of drilling including electrical, radioactivity, or other similar conventional logs, a lithologic description of samples and drill stem test information.

"Multiple Zone Completion" means a well completion in which two or more separate zones, mechanically segregated one from the other, are produced simultaneously from the same well.

"Oil" means crude oil or condensate or any mixture thereof, defined as follows:

1. "Crude Oil" means those hydrocarbons, regardless of gravity, that occur naturally in the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

2. "Condensate" means those hydrocarbons, regardless of gravity, that occur naturally in the gaseous phase in the reservoir that are separated from the natural gas as liquids through the process of condensation either in the reservoir, in the well bore or at the surface in field separators.

3. "Oil and Gas" shall not include gaseous or liquid substances derived from coal, oil shale, tar sands or other hydrocarbons classified as synthetic fuel.

"Oil and Gas Field" means a geographical area overlying an oil and gas pool.

"Oil Well" means any well capable of producing oil in substantial quantities.

"Operator or Designated Agent" means the person who has been designated by the owners or the board to operate a well or unit.

"Owner" means the person who has the right to drill into and produce from a reservoir and to appropriate the oil and gas that he produces, either for himself or for himself and others.

"Person" means and includes any natural person, bodies politic and corporate, partnerships, associations and companies.

"Pit" means an earthen surface impoundment constructed to retain fluids and oil field wastes.

"Pollution" means such contamination or other alteration of the physical, chemical or biological properties of any waters of the state, or the discharge of any liquid, gaseous or solid substance into any waters of the state in such manner as will create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.

"Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each zone of a general structure that is completely separated from any other zone in the structure is a separate pool. "Common source of supply" and "reservoir" are synonymous with "pool."

"Pressure Maintenance" means the injection of gas, water or other fluids into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.

"Produced Water" means water produced in conjunction with the conventional production of oil and/or gas.

"Producer" means the owner or operator of a well capable of producing oil or gas.

"Producing Well" means a well capable of producing oil or gas.

"Product" means any commodity made from oil and gas.

"Production Facilities" means all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells or injection wells, prior to any processing plant or refinery.

"Purchaser or Transporter" means any person who, acting alone or jointly with any other person, by means of his own, an affiliated, or designated carrier, transporter or taker, shall directly or indirectly purchase, take or transport by any means whatsoever, or who shall otherwise remove from any well or lease, oil or gas produced from any pool, excepting royalty portions of oil or gas taken in kind by an interest owner who is not the operator.

"Recompletion" means any completion in a new perforated interval or pool within an established wellbore and approved as a recompletion by the division.

"Refinery" means a facility, other than a gas processing plant, where controlled operations are performed by which the physical and chemical characteristics of petroleum or petroleum products are changed.

"Reserve Pit" means a pit used to retain fluid during the drilling, completion, and testing of a well.

"Seismic Operator" means a person who conducts seismic exploration for oil or gas, whether for himself or as a contractor for others.

"Shut-in Well" means a well that is completed, is shown to be capable of production in paying quantities, and is not presently being operated.

"Spud In" means the first boring of a hole in the drilling of a well by any type of rig.

"State" means the State of Utah.

"Stratigraphic Test or Core Hole" means any hole drilled for the sole purpose of obtaining geological information. The general rules applicable to the drilling of a well will apply to the drilling of a stratigraphic test or core hole.

"Temporarily Abandoned Well" means a well that is completed, is shown not capable of production in paying quantities, and is not presently being operated.

"Temporary Spacing Unit" means a specified area of land designated by the board for purposes of determining well density and location. A temporary spacing unit shall not be a drilling unit as provided for in U.C.A. 40-6-6, Drilling Units, and does not provide a basis for pooling the interest therein as does a drilling unit.

"Underground Source of Drinking Water" (or USDW) means a fresh water aquifer or a portion thereof that supplies drinking water for human consumption or that contains less than

10,000 mg/1 total dissolved solids and that is not an exempted aquifer under R649-5-4.

"Waste" means:

1. The inefficient, excessive or improper use or the unnecessary dissipation of oil or gas or reservoir energy.

2. The inefficient storing of oil or gas.

3. The locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations, or that causes unnecessary wells to be drilled, or that causes the loss or destruction of oil or gas either at the surface or subsurface.

4. The production of oil or gas in excess of:

4.1. Transportation or storage facilities.

4.2. The amount reasonably required to be produced in the proper drilling, completing, testing, or operating of a well or otherwise utilized on the lease from which it is produced.

5. Underground or above ground waste in the production or storage of oil or gas.

"Waste Crude Oil Treatment Facility" means any facility or site constructed or used for the purpose of wholly or partially reclaiming, treating, processing, cleaning, purifying or in any manner making non-merchantable waste crude oil marketable.

"Well" means an oil or gas well, injection or disposal well, or a hole drilled for the purpose of producing oil or gas or both. The definition of well shall not include water wells, or seismic, stratigraphic test, core hole, or other exploratory holes drilled for the purpose of obtaining geological information only.

"Well Site" means the areas that are directly disturbed during the drilling and subsequent use of, or affected by production facilities directly associated with any oil well, gas well or injection well.

"Wildcat Wells" means oil and gas producing wells that are drilled and completed in a pool in which a well has not been previously completed as a well capable of producing in commercial quantities.

"Working Interest Owner" means the owner of an interest in oil or gas burdened with a share of the expenses of developing and operating the property.

"Workover" means any operation designed to sustain, to restore, or to increase the production rate, the ultimate recovery, or the reservoir pressure system of a well or group of wells and approved as a workover, a secondary recovery, a tertiary recovery, or a pressure maintenance project by the division. The definition shall not include operations that are conducted principally as routine maintenance or the replacement of worn or damaged equipment.

KEY: oil and gas law
June 2, 1998 40-6-1 et seq.
Notice of Continuation February 3, 2012

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-6. Gas Processing and Waste Crude Oil Treatment.
R649-6-1. Gas Processing Plants.

1. In accordance with Section 40-6-16 any operator of a facility or plant in which liquefiable hydrocarbons are removed from natural gas, including wet gas or casinghead gas, and the remaining residue gas is conditioned for delivery for sale, recycling, or other use, shall file monthly, Form 13-A and Form 13-B.

1.1. Reports shall be filed for all gas processing plants or facilities to account for the receipt, processing, and disposition of all gas by the plant.

1.2. Plant operators that are required by contractual arrangements to allocate the residue gas and extracted liquids processed by the plant or facility to the individual producing wells, shall identify each well or entity connected to the plant or facility by API number and report the metered wet gas volumes, residue gas volumes returned to the field, and all allocated residue gas and natural gas liquid volumes.

R649-6-2. Waste Crude Oil Treatment Facilities.

1. Prior to the construction of a waste crude oil treatment facility, an application shall be submitted to the division describing the ownership, location, type, and capacity of the facility contemplated; the extent and location of the surface area to be disturbed, including any pit, pond, or land associated with the facility; and a reclamation plan for the site. Approval of the application must be issued by the division before any ground clearing or construction shall occur.

2. As a condition for approval of any application, the owner or operator shall post a bond in an amount determined by the division to cover reclamation costs for the site. Failure to post the bond shall be considered sufficient grounds for denial of the application.

3. No waste crude oil treatment facility operator shall accept delivery of crude oil obtained from any tank, reserve pit, disposal pond or pit, or similar facility unless the delivery is accompanied by a run ticket, invoice, receipt or similar document showing the origin and quantity of the crude oil.

KEY: oil and gas law
1989 40-6-1 et seq
Notice of Continuation April 2, 2013

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. Except as provided in 73-18-16, UCA,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.

Except as provided in 73-18-16, UCA 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.

Except as provided in 73-18-16, UCA 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
April 12, 2013 **73-18-15**
Notice of Continuation January 11, 2011

R651. Natural Resources, Parks and Recreation.
R651-407. Off-Highway Vehicle Advisory Council.
R651-407-1. Appointment and Description of Vehicle Advisory Council Membership.

The board will appoint an twelve-member off-highway vehicle advisory council representing off-highway vehicle users in the state. One member will be from each of the following interests: the Bureau of Land Management; the U.S.D.A. Forest Service; the Utah School and Institutional Trust Lands Administration; snowmobiling; motorcycling; all-terrain vehicle usage; four-wheel drive vehicle usage; off-highway vehicle dealers; off-highway vehicle safety; a youth member; and two members-at-large.

KEY: off-highway vehicles
July 23, 2012 41-22-10(1)
Notice of Continuation April 12, 2013

R657. Natural Resources, Wildlife Resources.
R657-12. Hunting and Fishing Accommodations for People With Disabilities.
R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63G-3-201, this rule provides the standards and procedures for a person with disabilities to:

(1) obtain a certificate of registration for taking wildlife from a vehicle;

(2) obtain a fishing license as authorized under Section 23-19-36(1);

(3) obtain a certificate of registration to participate in companion hunting;

(4) obtain a certificate of registration to receive a limited entry season extension;

(5) obtain a certificate of registration to receive a general deer or elk season extension;

(6) obtain a certificate of registration to hunt with a crossbow or draw-lock; or

(7) obtain a certificate of registration to use telescopic sights on a weapon when otherwise prohibited.

R657-12-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.

(b) "Crutches" means a staff or support designed to fit under or attach to each arm, including a walker, which improve a person's mobility that is otherwise severely restricted by a permanent physical injury or disability.

(c) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism attached to the device.

(d) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which severely impedes a person's mobility.

(e) "Telescopic sights" means an optical or electronic sighting system that magnifies the natural field of vision beyond 1X and is used to aim a firearm, bow or crossbow.

(f) "Upper extremity disabled" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to use any legal hunting weapon or fishing device.

R657-12-3. Providing Evidence of Disability for Obtaining a Fishing License.

(1) A resident may receive a free fishing license under Section 23-19-36(1) by providing evidence the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2) A person may obtain this license at any division office.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-4. Obtaining Authorization to Hunt from a Vehicle.

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

R657-12-5. Companion Hunting and Fishing.

(1) A person may take protected wildlife for a person who is blind, upper extremity disabled or quadriplegic provided the blind, upper extremity disabled or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate license, permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take protected wildlife for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The hunting or fishing companion must be accompanied by the blind, upper extremity disabled or

quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the protected wildlife.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for an extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer, Elk and Wild Turkey Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer, elk or wild turkey season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may include:

(i) a hunt immediately preceding the general any weapon buck deer season opening date published in the guidebook of the Wildlife Board for taking big game;

(A) the extension may not apply to general any weapon deer hunts with season length restrictions.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the guidebook of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the guidebook of the Wildlife Board for taking big game.

(d) The extended general wild turkey season may occur seven days prior to the limited entry turkey hunt season as published in the guidebook of the Wildlife Board for taking Upland Game and Wild Turkey.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-8. Crossbows and Draw-Locks.

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow or draw-lock to hunt big game, cougar, bear, turkey, waterfowl, small game or carp during the respective archery, any weapon hunting, or fishing seasons as provided in the applicable guidebooks of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow or draw-lock:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow or draw-lock; or

(ii) provides a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds for big game, bear and cougar, or 60 pounds for turkey, waterfowl and small game;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be:

(i) at least 18 inches long; and

(ii) must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring for big game, cougar, bear or turkey.

(3)(a) Any crossbow or drawlock used to hunt carp must have:

(i) A reel with line capable of tethering the bolt to restrict the flight distance; and

(ii) A positive safety mechanism.

(4) The following equipment or devices may not be used:

(a) arrows with chemically treated or explosive arrowheads;

(b) a bow with an attached electronic range finding device; or

(c) a bow with an attached telescopic sight, except as provided in R657-12-9.

(5) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(6) A drawn and cocked crossbow or bow with a draw-lock may not be carried in or on a vehicle.

(7) Conventional bows equipped with a draw-lock and used to hunt big game must conform with the minimum draw weights, and arrow and broadhead restrictions contained in R657-5.

R657-12-9. Telescopic Sights.

(1) A person who has a permanent vision impairment leaving them with worse than 20/40 corrected visual acuity in the better eye may receive a Certificate of Registration to use telescopic sights; if in the professional opinion of the eye care provider telescopic sights will sufficiently mitigate the effects of the disability to enable the person to:

(a) adequately discern between lawful and unlawful

wildlife species and species genders; and

(b) safely discharge a firearm or bow in the field.

(2) A person with a qualified vision impairment may obtain a Certificate of Registration from the Division to use telescopic sights by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that:

(a) the applicant has a permanent vision impairment resulting in worse than 20/40 corrected visual acuity in the better eye; and

(b) telescopic sights will sufficiently mitigate the effects of the vision impairment to enable the applicant to:

(i) adequately discern between lawful and unlawful wildlife species and species genders; and

(ii) safely discharge a firearm or bow in the field.

R657-12-10. Fishing Licenses for Veterans with Disabilities.

(1) A resident who has a service-connected disability of 20% or more and is not eligible to fish without a license under Section 23-19-14 or to receive a free fishing license under Section 23-19-36 may purchase a discounted 365-day fishing license upon furnishing verification of a service-connected disability and paying the fee established in the approved fee schedule.

(a) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof and the Army and Air National Guard of the United States.

(b) "Service-connected disability" means injury or illness incurred or aggravated:

(i) while in Armed Forces service; and

(ii) that is recognized by the United States Department of Veterans Affairs or by a branch of the Armed Forces.

(c) "Verification of Service-Connected Disability" means an official written letter, statement, or card issued by the Department of Veterans Affairs or by a branch of the Armed Forces certifying that the person has a service-connected disability with a disability rating of 20% or higher.

(2) The discount provided in this section on the purchase of a fishing license does not apply to combination licenses.

(3) Veteran fishing licenses shall be issued at division offices and may be issued by mail, online or at license agents. The purchaser may be required to complete an affidavit of the service-connected disability at the time of purchase.

R657-12-11. Administrative and Judicial Review.

(1) A person may request administrative review of the division's partial or complete denial of a certificate of registration under this chapter by delivering a written request for administrative review to the division director or designee within 30 days of the date of denial.

(2) The request for administrative review shall include:

(a) the name, address, and phone number of the petitioner;

(b) a specific description of the disability involved and the physical limitations imposed by that disability;

(c) a specific description of the accommodations requested to mitigate the physical limitations caused by the disability; and

(d) verifiable medical or other information describing the disability and the medical need for the requested accommodation.

(3) A person may appeal the division director's or designee's decision under Subsection (1) by filing a request for agency action pursuant to R657-2.

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R657. Natural Resources, Wildlife Resources.
R657-20. Falconry.
R657-20-1. Purpose and Authority.

(1) Under authority of Section 23-17-7 and in accordance with 50 CFR 21 and 22 (10/01/2000), which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state of Utah.

(2) Take of any raptor species for the practice of falconry must be in compliance with these regulations.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state of Utah.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in Section 10.13 of 50 CFR 21, unless the activities are allowed under provisions of this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order Accipitriformes (i.e., vultures, California Condor, kites, eagles and hawks), Order Falconiformes (i.e., caracaras, and falcons) and Order Strigiformes (i.e., owls), and hybrids thereof, and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250) provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs, and other administrative regulations for practicing falconry are published in the Utah falconry Guidebook which is available by contacting the Division of Wildlife Resources office in Salt Lake City or online at http://wildlife.utah.gov/guidebooks/2007_falconry.

(7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a valid and applicable state COR or Federal permit is prima facie evidence that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

(8) Pursuant to Utah Code Section 23-19-9, the Division has the authority to suspend or revoke any or all of the privileges granted under this rule.

(a) Upon request, a permittee whose COR has been suspended may reapply for a falconry COR, pursuant to the application procedures in this rule, at the end of the suspension period.

(9) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

R657-20-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and R657-6-2.

(2) In addition:

(a) "Abatement activities" means use of trained raptors to flush, haze or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

(b) "Aerie" refers to the nest of any raptor.

(c) "Bate" refers to a hawk or falcon that attempts to fly while being tethered to the falconer's fist, a block or other form of perch, whether from wildness, or for exercise, or in an attempt to chase.

(d) "Business Day" refers to any day the Division is open for business

(e) "Captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(f) "CFR" means the Code of Federal Regulations.

(g) "COR" for purposes of this rule means a Certificate of Registration (permit) issued by the Division authorizing an individual to participate in the sport of falconry.

(h) "Eyas" means a young raptor not yet capable of sustained flight such as a nestling or fledgling.

(i) "Division" means the Utah Division of Wildlife Resources.

(j) "Falconry" means, for the purposes of this rule, caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking of raptors from the wild to use in the sport of falconry; and caring for, training, and transporting raptors held for falconry.

(k) "Fledged" means the stage in a young raptor's life when the feathers and wing muscles are sufficiently developed for flight. A young raptor that has recently fledged but is still dependent upon parental care and feeding is called a fledgling.

(l) "Form 3-186A" means the Migratory Bird Acquisition and Disposition Report form.

(m) "Hacking" means the temporary or permanent release of a raptor held for falconry to the wild so that it may survive on its own.

(n) "Haggard" means a wild adult raptor.

(o) "Humane treatment" for purposes of this rule means to maintain raptors in accordance with accepted standards for practicing falconry, including care and treatment of a raptor so that it is physically healthy and maintaining raptors under conditions that are known to prevent predictable illness or injury.

(p) "Hybrid" means offspring of birds listed as two or more distinct species including but not limited to those listed in section 10.13 of Subchapter B of 50 CFR 21, or offspring of birds recognized by ornithological authorities as two or more distinct species including but not limited to those listed in section 10.13 of Subchapter B of 50 CFR 21.

(q) "Imping" means to graft new or additional feathers to existing feather shafts on a raptor's wing(s) or tail to repair damage or to increase flying capacity.

(r) "Imprint", for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fully feathered. An imprinted bird is considered to be so for its entire lifetime.

(s) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property, or who is a lessee of the property.

(t) "Livestock depredation area" means a specific geographic location in which depredation on livestock by golden eagles has been recognized.

(u) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor;

1) permanent, nonreusable (plastic, zip-tie) black-colored numbered leg bands identify an individual raptor that has been taken from the wild;

2) seamless (metal) yellow-colored numbered leg bands identify an individual raptor that has been captive-bred

(a) permanent, nonreusable (plastic, zip-tie) yellow-colored numbered leg bands are used when a seamless band needs to be replaced

(v) "Meet" means, for purposes of this rule, an organized falconry event where protected wildlife may be taken and for which a 5 day non-resident meet hunting license is approved by the Wildlife Board.

(w) "Mews" refers to a protected indoor facility (a residence or non-residence) where raptors are kept for falconry purposes.

(x) "Migratory game bird" means, for the purposes of this rule, ducks, geese, swans, snipe, coot, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(y) "Nest" refers to the structure or place where a raptor lays eggs and shelters its young.

(z) "Passage raptor" means a first-year raptor capable of sustained flight that is no longer dependent upon parental care and/or feeding

(aa) "Raptor" means any bird of the Order Accipitriformes, Order Falconiformes (falcons and caracaras) or the Order Strigiformes (owls) and hybrids thereof unless defined otherwise in this rule.

(bb) "Reasonable time of day" for inspections, or other business, at a falconers facilities refers to hours the Division is open for business, or some other prearranged time between the falconer and the Division representative.

(cc) "Service" means the U.S. Fish and Wildlife Service.

(dd) "Take" means to: hunt, pursue, harass, catch, capture, possess, angle, seine, trap or kill any protected wildlife; or attempt any such action.

(ee) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(ff) "Trial" means, for purposes of this rule, an organized falconry event where European Starling (Sturnella neglecta), House Sparrow (Passer domesticus), Rock Dove/feral pigeon (Columba livia). pen-reared game birds, and lawfully possessed, domestic birds may be taken.

(gg) "Upland game" means, for purposes of this rule, pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Dusky ("Blue") Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, and White-tailed Ptarmigan.

(hh) "Weathering Area" refers to a protected outdoor facility where raptors are kept for falconry purposes.

(ii) "Wild" refers to an animal in its original natural state of existence; not domesticated nor cultivated.

(jj) "Year" refers to a normal calendar year of January 1 to December 31, unless defined otherwise in this rule.

R657-20-3. Minimum Age Requirement.

(1) A person who wishes to practice the sport of falconry in Utah must be at least 12 years of age.

R657-20-4. Falconry COR, Permits, and Licenses.

(1) The division may deny issuing a COR or permit to any applicant, if:

(a) The applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of practicing the sport of falconry bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(c) holding raptors at the proposed location violates federal, state, or local laws.

(2) A COR is not transferrable.

(3) CORs do not provide the holder with any rights of succession.

(4) Any COR issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(5) A resident must possess a valid COR issued by the Division to take, possess, hunt with, or transport raptors for the purpose of practicing the sport of falconry in Utah.

(a) A falconry COR requires up to a 30-business day processing time from the date an application is received.

(b) A falconry COR is valid at the Apprentice Class level for a 3-year period from date of issuance.

(c) A falconry COR is valid at the General and Master Class level for a 5-year period from date of issuance.

(6) The falconer must have a falconry COR or a legible copy of it in their immediate possession when not at the location of their falconry facilities and is trapping, transporting, working with, or flying raptors in falconry.

(7) A falconer must obtain a Raptor Capture Permit prior to capturing or attempting to capture any raptor from the wild in Utah.

(i) A valid falconry COR is required for a Utah resident in order to obtain a Raptor Capture Permit.

(ii) Nonresident falconers are not required to purchase a Utah falconry COR in order to purchase a Nonresident Raptor Capture Permit.

(8) The falconry COR allows a resident falconer to use a raptor for unrestricted take of unprotected wildlife including coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock dove or feral pigeon; no other license or permit is required other than the falconry COR for take of these species.

(a) A non-resident falconer is required to have a current falconry license or permit from his/her state of residence and a valid federal falconry permit, if applicable.

(9) With a falconry bird, a falconer may take any species for which a federal Depredation Order is in place under parts 21.43, 44, 45, or 46 of 50 CFR 21, at any time in accordance with the conditions of the applicable depredation order, as long as the falconer is not paid for doing so.

(10) A falconer releasing a raptor for the purpose of hunting protected wildlife, not held in private ownership, must first obtain the appropriate licenses, permits, tags, CORs and stamps as provided in the applicable rules and guide books of the Wildlife Board.

(a) The hunting of upland game shall be done in accordance with the rule and guide book of the Wildlife Board for taking upland game species.

(b) The hunting of migratory game birds shall be done in accordance with the rule and guide book of the Wildlife Board for taking migratory game species.

(c) A hunting license is not required to take pen-reared game birds with a trained raptor.

R657-20-5. Application for a Falconry COR.

(1) To obtain a falconry COR, applicants must have either an indoor mews or an outdoor weathering area, or both pursuant to Section R657-20-.

(2) Resident Applications

(a) A resident applying for or renewing a falconry COR shall:

(i) Submit a completed falconry application to the Division; and

(ii) Include the appropriate COR fee.

(b) As a condition to obtaining a falconry COR, the falconer agrees to reasonable administrative inspections of falconry raptors, facilities, equipment, CORs, and related documents.

(c) Falconry raptors, facilities, equipment, and documents may be inspected by the Division only in the presence of the permittee at a reasonable time of day.

(d) At the time of renewal, the current falconry COR number must be included on the falconry COR renewal application.

(e) A falconer claiming residency in Utah may not claim

residency in, or possess a resident falconry license or falconry permit from, another state.

(f) Resident falconers wishing to renew a valid falconry COR must submit a completed falconry COR renewal form to the Division upon or before the expiration date specified on the current falconry COR.

(i) Falconry COR Renewals require up to a 30-day processing time for completion.

(g) Residents who do not hold a valid falconry COR or do not submit a COR renewal form by the date their current COR lapses and who maintain raptors in possession are in violation of unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3.

(h) Failure to submit required records and timely, accurate, or valid reports may result in administrative action by the Division.

(i) Administrative action that may be taken by the Division include:

(A) Issuance of a probationary COR with restrictions on activities allowed; or

(B) Non-renewal of a COR until the required records and reports are completed.

(j) A falconry COR is considered to be lapsed if the falconer has not applied for renewal within 30 calendar days of the expiration of their current COR.

(A) Disposition of raptors held under a lapsed falconry COR is at the discretion of the Division.

(B) Raptors held under a lapsed falconry COR are subject to seizure by the Division.

(k) A falconer who has allowed their COR to lapse may apply for a new COR.

(i) If a falconry COR has lapsed for fewer than 5 years, it will be reinstated at the level held previously if proof of certification at that level is provided and the applicant has appropriate facilities and equipment; and is otherwise qualified under R657-20-4.

(ii) If a falconry COR or Permit has lapsed for 5 years or longer, an applicant must correctly answer at least 80 percent of the questions on an examination administered by the Division as required in Section R657-20-11(1)(b)(ii).

(A) If the applicant passes the examination, a falconry COR will be reinstated at the level previously held.

(B) The applicant's facilities and equipment must also pass inspection by a Division representative before possessing a raptor for falconry as required in Sections R657-20-7, R657-20-9, and R657-20-10.

(3) Falconers Wishing to Establish Residency in Utah

(a) A falconer entering Utah to establish residency must possess the following:

(i) A copy of the previous state's valid falconry license indicating class designation, a current federal falconry permit number, if applicable, a valid health certificate, the number and species of raptors with the band number (if banded) of each raptor held in possession, and an entry permit number obtained from the Utah Department of Agriculture must be presented to the Division within 5 business days after entering Utah.

(b) A six-month domicile period is required for a falconer entering Utah to establish residency.

(c) A falconer entering Utah to establish residency may possess legally obtained raptors that were acquired prior to entering Utah.

(i) If the raptor(s) is to be used for falconry during the six-month domicile period, the falconer must purchase all applicable Utah non-resident hunting licenses and/or permits.

(d) A falconer wishing to establish residency must maintain proper facilities and equipment (see Section R657-20-6, R657-20-7, and R657-20-8).

(e) At the conclusion of the six-month domicile period, a new resident applying for a falconry COR must submit the following to the Division:

(i) A completed falconry application indicating class designation;

(ii) A copy of a valid falconry license from the former state of residency indicating class designation;

(iii) A valid federal falconry permit number, if applicable;

(iv) The appropriate COR fee.

(f) A falconer that holds raptors in possession and fails to apply for a falconry COR within 30 days of qualifying for residency will be in violation of the law for unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3 and may be denied a falconry COR, and any raptors in their possession may be subject to seizure.

R657-20-6. Care and Facilities Requirements.

(1) A person may not possess a raptor without first providing adequate facilities and equipment to humanely house and care for the raptor.

(2) Care Requirements.

(a) The Falconer is responsible for the maintenance and security of raptors held in his or her care.

(b) All raptors held under a falconry COR must be kept in humane and healthy conditions.

(i) The Division may impose additional requirements to insure the safe and humane handling and care of raptors when the birds are maintained in inhumane or unhealthy conditions.

(3) Facilities Requirements and Inspections.

(a) The primary consideration for raptor housing facilities whether an indoor mews or outdoor weathering area is protection of the raptor from unauthorized human access and disturbance, the environment, predators (to include domestic as well as wild animals), inhumane treatment, and other undue disturbances.

(b) Request for a facilities inspection must be made by calling the Regional Division office where the facilities are located.

(c) Once a request is received, a facilities inspection will be completed by the Division within 30 business days of the date the request is received.

(d) Before a person may obtain a falconry COR, the raptor housing facilities and equipment shall be inspected by a Division representative.

(i) Inspections must be conducted in the presence of the permittee.

(ii) In the course of this inspection, the Division representative may collect a photograph of the facilities to keep on file with the falconer's other state records.

(e) Detailed photos and a description of facilities and equipment, including measurements of mews or weathering areas, shall constitute a temporary inspection for purposes of issuing COR's if the Division has not physically inspected within 30 business days. The COR may be revoked if the photos and descriptions of facilities and equipment do not match the facilities in place. Any significant changes to facilities require notification to the Division.

(f) Facilities must be adequate to house the number of raptors in possession.

(i) Only inspected and approved indoor mews and weathering areas may be used for housing raptors for falconry.

(g) In conjunction with inspected and approved facilities, raptors may also be housed inside a place of residence as provided in Section R657-20-7(6)(e)(vii).

(i) A new facilities inspection will be required when a permittee changes address or increases the number of raptors in their possession.

(h) The Utah Falconry Program Coordinator must be notified within five (5) business days of a change in the location of an individual's falconry facilities.

(i) Facilities requirements for non-resident falconers

wishing to establish residency in Utah

(A) A raptor may be housed in a temporary facility for no more than six months, provided the temporary facility has been inspected and has a suitable perch for the raptor and adequately protects it from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(4) The Mews.

(a) The mews must have a suitable perch for each raptor, at least one opening for sunlight, and must provide for a healthy environment for each raptor inside.

(b) A mews must be large enough to allow easy access for the care and feeding of raptors kept inside.

(c) Untethered raptors may be housed together in the mews if they are compatible with each other.

(i) If untethered raptors housed in an indoor mews that is not a place of residence, then the mews must be fully enclosed;

(ii) Walls and ceiling of the mews may be solid, or barred, or covered with heavy duty netting;

(iii) If bars, or heavy duty netting, or mesh are used, openings must be narrower than the width of the body of the smallest raptor housed in the mews.

(d) Each mews must be large enough to allow each raptor the opportunity to fly if it is untethered or, if tethered, to fully extend its wings or bate without damaging its feathers.

(e) Each raptor shall have a pan of clean water available to it at all times while in a mews, unless weather conditions, perch type used, or some other factor makes it inadvisable to have water available next to the raptor.

(f) Acceptable indoor facilities may include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and opportunity to maintain undamaged feathers.

(g) A place of residence used for housing falconry raptors indoors is considered a mews provided each raptor is tethered to a suitable perch.

(i) A raptor may be untethered inside a place of residence when being handled.

(ii) If a raptor is housed inside a place of residence, there is no need to modify windows or other openings in the residence.

(iii) A raptor may be housed untethered inside a flight chamber constructed within a place of residence with the following provisions:

(A) the flight chamber must have a source of light;

(B) The flight chamber must be fully enclosed;

(C) Walls and ceiling of the flight chamber may be solid, or barred, or covered with heavy duty netting;

(D) If bars, or heavy duty netting, or mesh are used, openings must be narrower than the width of the body of the smallest raptor housed in the flight chamber.

(5) Weathering Area

(a) The weathering area must be totally enclosed, and can be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material capable of preventing the raptor's escape and excluding predators and other animals capable of causing harm to the raptor.

(b) The weathering area must be covered and have at least one covered perch to protect a raptor from predators and weather.

(c) Adequate perches must be provided within the weathering area to ensure the health, safety and protection of the raptor.

(d) Raptors must be tethered while inside the weathering area.

(e) The weathering area must be large enough to insure that the raptor(s) cannot strike the enclosure when bating from the perch.

(f) Raptors may be perched next to a solid or fully opaque wall in the weathering area provided the proximity of the wall to the perch will not cause injury to the raptor or feather damage.

(g) Each raptor should have a pan of clean water available.

(i) At the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

(h) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements of this chapter and are approved by the Division.

(i) Falconry raptors may be kept outside in the open at any location if they are under watch by an individual familiar with the handling of raptors.

(i) Approved falconry facilities may be on property owned by another person, provided the falconer submits a signed and dated statement by the falconer and the property owner agreeing that the falconry facilities, equipment, and raptors may be inspected without advance notice by the Division at any reasonable time of day.

(j) Raptors in transit must be provided with an adequate perch and protected from extreme temperatures, wind, and excessive disturbance to ensure the health, safety and protection of any raptor being transported.

R657-20-7. Temporary Care of Falconry Raptors.

(1) Short-term handling of a raptor by a person other than the permitted falconer, such as allowing a person to handle or practice flying a permittee's raptor is not considered temporary possession for the purposes of this rule, provided the permittee is present and supervising the individual that is handling the raptor.

(2) Temporary care of raptors by another falconry permittee

(a) Another falconry permittee may care for a falconer's raptors for up to 120 consecutive calendar days.

(b) The temporary care permittee must have a signed and dated statement from the falconer authorizing the temporary possession, in addition to a copy of the FWS Form 3-186A for that raptor.

(i) The signed and dated statement must identify the time period for which the temporary permittee will keep the raptors and what activities are allowed to be carried out with the raptors.

(ii) Falconry raptors in temporary care will remain on the original falconer's COR and will not be counted against the possession limit of the person providing the temporary care for the raptors.

(iii) If the permittee providing temporary care for the raptors holds the appropriate level falconry permit, then the temporary permittee may fly the raptors in whatever way authorized by the falconer, including hunting.

(iv) Temporary care of raptors may be extended by the Division in extenuating circumstances such as, illness, military duty, and family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(3) Temporary care of raptors by a non-falconer.

(a) A non-falconer may care for a falconer's raptors for up to 45 consecutive calendar days.

(i) The raptors will remain on the original falconer's COR.

(ii) The raptors must remain at the original falconer's facilities.

(iii) Temporary care of raptors by non-falconers may be extended by the Division in extenuating circumstances such as illness, military duty, or family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(iv) A non-falconers caring for a falconer's raptors may not fly them for any reason.

(4) Transfer of falconry raptors when a permittee dies.

(a) A surviving spouse, executor, administrator, or other

legal representative of a deceased falconry permittee may transfer any raptor(s) held by the deceased permittee to another authorized permittee within 90 calendar days of the death of the original falconry permittee.

(b) After 45 calendar days from the death of the falconry permittee, disposition of raptors held under the permit is at the discretion of the Division.

R657-20-8. Equipment.

(1) Prior to the facilities inspection and issuance of a falconry COR, the applicant shall possess the following items for each raptor in possession or for each raptor proposed for future capture:

(a) At least one pair of Aylmeri jesses, or similar type, made from pliable, high quality leather or suitable synthetic material;

(b) The materials and equipment necessary to make Aylmeri jesses or other material to be used when any raptor is flown free.

(i) Traditional one-piece jesses may be used on raptors when not being flown.

(b) At least one flexible, weather-resistant leash.

(c) At least one swivel of acceptable falconry design.

(d) At least one suitable container, two to six inches deep and wider than the length of the raptor, to hold drinking and bathing water for each raptor.

(e) At least one perch of an acceptable design will be provided for use for each raptor.

(f) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce or less.

(g) For small raptors, such as kestrels, merlins, and sharp-shinned hawks, the scale must weight in increments of at least 1 gram.

R657-20-9. Apprentice Class Falconer.

(1) Apprentice class falconer requirements

(a) Applicants for an Apprentice Class falconry COR must be at least 12 years of age;

(i) Applicants for an Apprentice Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor Apprentice Class falconer are legally responsible for the activities of their child.

(b) Applicants for an Apprentice Class falconry COR must correctly answer at least 80 percent of the questions on an examination administered by a Division representative.

(i) An individual may not take the falconry exam earlier than two months prior to their 12th birthday.

(ii) The examination questions will cover basic care and handling of falconry raptors, state and Federal laws and regulations relevant to falconry, raptor biology, diseases and health issues, raptor identification, trapping and training methods, and other appropriate subject matter.

(iii) An individual may contact any Division office for information about taking the examination.

(iv) Falconry examinations are administered at any Division office by appointment only during business hours.

(v) An individual that fails to correctly answer at least 80 percent of the questions on the exam may retake the exam after a minimum 14-day period.

(c) An applicant's facilities and equipment must pass inspection by the Division under R657-20-7, R657-20-9, and R657-20-10 before a falconry COR can be issued.

(3) Possession of Raptors at the Apprentice Class

(a) An Apprentice Class falconer may take or possess for falconry

(i) Any wild-caught passage age raptor or captive-bred, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(1) The hybrid raptor cannot be the result of a cross involving any species listed in section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act)

(ii) An Apprentice Class falconer may not take or possess wild caught, captive-bred, or hybrid eagles;

(ii) An Apprentice Class falconer may not take or possess federally listed threatened or endangered species;

(iii) An Apprentice Class falconer may not take or possess any wild-caught species listed as a national Species of Conservation Concern by the Service;

(b) An Apprentice Class falconer may possess no more than one (1) wild-caught passage age raptor or captive-bred raptor for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the Apprentice has been issued.

(c) Another falconry permittee may capture a wild raptor and transfer the raptor to an Apprentice Class falconer as provided in R657-20-15(5) and R657-20-15(15).

(d) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.

(e) An Apprentice Class falconer may not possess an imprint raptor.

R657-20-10. Apprentice Class Sponsor.

(1) Applicants for an Apprentice Class falconry COR must have a sponsor to mentor and assist the Apprentice Class falconer, as necessary, in:

(a) Husbandry and training of raptors held for falconry;

(b) Relevant wildlife laws and regulations, and

(c) Determining what species of raptor is appropriate for the Apprentice to possess.

(2) The person applying for an Apprentice Class falconry COR must provide the Division with a letter from their chosen sponsor stating that sponsor's willingness to serve as a sponsor for the Apprentice Class falconer.

(3) Requirements of an Apprentice Class Sponsor

(a) Any person sponsoring an apprentice under the age of 18, other than the minor's parent or legal guardian, must be approved in writing by the minor's parent or legal guardian and submitted to the Division before being designated as the minor's sponsor;

(b) A sponsor must be a Master Class Falconer who holds a valid Utah Falconry COR, or

(i) Be a General Class Falconer who is at least 18 years of age, has no less than 2 years experience at the General Class falconer level, and who holds a valid Utah falconry COR.

(4) Unless approved by the Division in writing, the sponsor cannot reside

(a) Greater than a 100 mile distance from the Apprentice; or

(b) Outside of Utah.

(5) Apprentice Class falconers that change or terminate sponsors must notify the Division in writing and provide a letter from the new sponsor showing compliance with the requirements in R657-20-12.

(a) In the event sponsorship is terminated, the holder of an Apprentice Class falconry COR must obtain a new sponsor within 30 calendar days of termination.

R657-20-11. General Class Falconer.

(1) General Class falconer requirements

(a) Applicants for a General Class falconry COR must be at least 16 years of age;

(i) Applicants for a General Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor General Class

falconer are legally responsible for the activities of their child.

(b) New General Class applicants must submit a request for class upgrade to the Division in writing or via email, and include a document from their General Class or Master Class sponsor stating that the General Class applicant has practiced falconry at the Apprentice Class Falconer level or equivalent for at least 2 years including maintaining, training, flying, and hunting raptors for at least 4 months in each separate 12-consecutive month period.

(i) For purposes of this Subsection, 2 years means two separate 12-consecutive month periods.

(ii) A General Class applicant may not substitute any falconry school program or education to shorten the minimum period of 2 years at the Apprentice level.

(iii) Evidence that a General Class applicant has had a valid General Class level falconry license or permit in another state for at least 2 years may be substituted for the Apprentice Class falconry COR requirement.

(2) Possession of raptors at the General Class

(a) A General Class falconer may take or possess any eyas or passage age wild-caught raptor,

(b) A General Class falconer may possess captive-bred, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(i) A General Class falconer may not take or possess eagles;

(ii) A General Class falconer may take or possess or any wild-caught species listed as a national Species of Conservation Concern by the Service.

(b) A General Class falconer may possess no more than 3 wild-caught eyas or passage age raptors, captive-bred raptors, or hybrid raptors, or any combination thereof, for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the General Class falconer has been issued.

R657-20-12. Master Class Falconer.

(1) Master Class falconer requirements

(a) Applicants for a Master Class falconry COR must have 5 years of experience practicing falconry with raptor(s) held under their own state, tribal, or territorial falconry COR or permits at the General Class Falconer level.

(i) For the purposes of this Subsection, "5 years of experience" means maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each of five (5) separate 12-month periods.

(ii) Evidence that the applicant has had a valid General Class level falconry license or permit in another state for at least 5 years may be substituted for the General Class falconry COR requirement.

(iii) If an applicant has held falconry raptor(s) on an extended temporary basis, that experience may qualify for purposes of these requirements.

(2) Possession of Raptors at the Master Class

(a) A Master Class falconer may take or possess any wild-caught eyas or passage age, captive-bred raptor, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(i) A Master Class falconer may not take or possess a bald eagle (Haliaeetus leucocephalus)

(ii) A Master Class falconer may take or possess any wild-caught species listed as a national Species of Conservation Concern by the U. S. Fish and Wildlife Service

(b) A Master Class falconer may take and possess a golden eagle only if the qualifications set forth parting Subsection (2)(d) below are met.

(c) A Master Class falconer may possess no more than 5 wild-caught eyas or passage age raptors for use in falconry, including golden eagles, regardless of the number of state, tribal, or territorial falconry CORs or permits that the Master Class falconer has been issued.

(i) A Master Class falconer may possess any number of captive-bred raptors, provided

(A) Approved facilities are available

(B) The captive-bred raptors must be trained in the pursuit of wild game and used for hunting.

(d) A Master Class falconer must obtain an authorization from the Division to possess an eagle for use in falconry pursuant to R657-20-13;

(i) Approval for a Master Class falconer to take or possess an eagle for use in falconry shall not be granted unless the following documentation is provided:

(A) A written statement documenting the experience of the Master Class falconer in handling large raptors, including information about the species handled and the type and duration of activities in which the experience was obtained.

(B) At least two letters of reference from individuals with experience in handling or flying large raptors such as eagles, ferruginous hawks (Buteo regalis), Northern goshawks, or great horned owls (Bubo virginianus).

(I) Each reference letter must contain a concise history of the author's experience with large raptors, which can include but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors.

(II) Each reference letter must also assess the Master Class Falconer's ability to care for eagles and fly them in falconry.

R657-20-13. Acquiring Raptors for Falconry.

(1) Licensed falconers wishing to take raptors from the wild for falconry must purchase a Raptor Capture Permit from the Division.

(a) A Raptor Capture Permit is valid for one wild raptor authorized for possession in accordance with the restrictions and limitations of this rule.

(b) Raptor Capture Permits are non-transferable and non-assignable and can only be used by the person specified on the permit. However, another person can assist the permit holder pursuant to Section R657-20-15(15).

(c) The Raptor Capture Permit and falconry COR (or legible copies thereof) must be in the possession of the permittee while pursuing, capturing or attempting to capture a wild raptor.

(2) On an annual basis, the falconry Program Coordinator shall determine the available take of peregrine falconers and raptors listed on the most recent edition of the Utah sensitive species list.

(a) Notice of any limitations on the take of sensitive raptors shall be available by February 1 of each year.

(b) If the number of applications received exceeds the available take, then the Division will conduct a drawing.

(c) An individual may only draw once every 2 years to take peregrine falcons, sensitive raptor species, and nonresident legal raptors.

(i) If the number of applications received is less than the available take, then the 2 year restriction is waived, and the remaining take will be made available to resident and nonresident falconers of the appropriate class on a first-come first-served basis.

(3) A licensed falconer may not take more than 2 raptors from the wild each calendar year for falconry purposes.

(a) Haggard age raptors may not be taken from the wild for falconry.

(b) Any raptor taken from the wild for falconry is considered a "wild" raptor for the balance of the raptor's life, regardless of the length of captivity or the raptor's transfer to another permittee or permit type.

(c) A licensed falconer who wishes to take a raptor from the wild must meet all state and tribal requirements in this rule

for capture of wild raptors for falconry.

(d) A permittee may not purchase, sell, trade, or barter a wild raptor.

(4) Resident Take of Wild Raptors

(a) While trapping, falconers shall not retain and transport more than one captured wild raptor per capture permit.

(5) Taking of wild raptors is prohibited within the boundaries of all National and State Parks in Utah

(6) A raptor may be taken from the wild by traps or nets that minimize the potential of physical injury and unnecessary stress to the raptor.

(a) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, bow net traps, or other trapping devices that are humane and acceptable as commonly used in falconry trapping procedures.

(b) Trapping devices must be constantly attended while in use.

(7) A raptor taken from the wild may be transferred to another permittee under the following conditions:

(a) The captured raptor will count as one of the raptors allowed for take from the wild in the calendar year it was taken by the capturing falconer;

(b) The transferred wild raptor will not count as a capture by the recipient.

(8) A permittee may not intentionally capture wild raptor species for falconry that their classification as a falconer does not allow them to possess.

(a) If a permittee captures a wild raptor he or she is not allowed to possess, it must be released immediately.

(9) A General or Master Class falconer may take no more than 1 raptor from the wild each year which belongs to a species listed as threatened or endangered under the federal Endangered Species Act if allowed under 50C CFR part 17, and if a federal endangered species permit is obtained before taking the bird.

(10) A General or Master Class falconer may take eyas raptors from a nest or aerie only during the seasons specified for taking eyas raptors in Subsection (12).

(a) At least one young must be left in any nest or aerie from which an eyas is taken.

(b) Removal of young is prohibited from a nest or aerie that contains only one eyas.

(c) An eyas may not be removed from its aerie prior to 10 days of age.

(d) Aeries may not be entered when young are 28 days or more of age.

(11) An Apprentice, General or Master Class falconer may take passage age raptors from the wild only during the seasons specified for taking passage age raptors in Subsection (12).

(12) Periods for Allowable Take Of Raptors From the Wild.

(a) Eyas or passage age raptors of any allowable Strigiform species may be taken from March 1 through November 30.

(b) Eyas or passage age raptors of any allowable Accipitriform and Falconiform species except peregrine falcon (Falco peregrinus) and golden eagle (Aquila chrysaetos) may be taken January 1 through December 31.

(i) The peregrine falcon take season begins annually on May 1st and ends on August 31st.

(ii) Notwithstanding Subsection (12)(b):

(A) Passage age raptors that fledged from the prior year may not be taken after March 1st; and

(B) Passage age gyrfalcons (Falco rusticolus) may be taken at any time.

(c) Licensed falconers may take any raptor from the wild that is authorized under this rule for take for their class level.

(i) A wild caught raptor that is banded with a Federal Bird Banding Laboratory aluminum band may be taken, provided the Federal Bird Banding Laboratory is notified of the removal of the banded raptor from the wild;

(ii) The Federal Bird Banding Laboratory aluminum band may be removed if the raptor is to be retained, after notifying the Federal Bird Banding Laboratory.

(iii) Capture of any raptor that is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird must be reported to the Division no more than 5 business days after the capture.

(iv) Capture of any raptor that is marked with any other band, research marking, or attached research transmitter attached to it must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263.

(13) Nonresident Take of Wild Raptors

(a) A nonresident falconer may not take any raptor from the wild without first obtaining a Nonresident Raptor Capture Permit from the Division.

(b) Nonresidents must show proof of a valid federal falconry permit or falconry license issued by their state of residency to purchase a Nonresident Raptor Capture Permit.

(c) Nonresident take of raptors is subject to all other applicable regulations set forth in this rule.

(14) Special provisions for take of wild peregrine falcons.

(a) Only General and Master Class falconers only may take wild eyas or passage age peregrine falcons as provided in this rule.

(b) The areas open for taking eyas and passage age peregrine falcons will be designated annually by the Falconry Program Coordinator.

(c) A peregrine falcon that is marked with a with a Federal Bird Banding Laboratory aluminum band and/or a research band such as a colored band with alphanumeric codes or some other research marking attached must be immediately released.

(i) Research band numbers and location and date of capture must be reported to the Division and the Federal Bird Banding Laboratory (1-800-327-2263) within 5 business days of the date of capture.

(15) Special provisions for take of wild golden eagles

(a) A Master Class falconer with a COR to take golden eagles may take no more than three from the wild, subject to the requirements in federal statute 50 CFR 21 and Section R657-20-14(2)(c)(i).

(i) A Master Class Falconer that is authorized to take golden eagles may take no more than two golden eagles from the wild in any calendar year and only in a livestock depredation area during the time the depredation area declaration is in effect.

(A) The establishment, boundaries, and duration of a livestock depredation area in Utah are declared by U.S.D.A. Wildlife Services and the U. S. Fish and Wildlife Service in Lakewood, CO.

(ii) A Master Class falconer authorized to take golden eagles for use in falconry may capture an immature or subadult golden eagle only in a livestock depredation area during the time the depredation area is in effect in Utah.

(A) A Master Class Falconer may capture a nesting adult golden eagle, or take an eyas from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the parent adult eagle is preying on livestock.

(B) A government employee who has trapped a golden eagle under Federal, State, or tribal permit may transfer the eagle to a Master Class falconer that is authorized to possess golden eagles if the eagle cannot be released in an appropriate location.

(iii) A Master Class Falconer authorized to take a golden eagle for falconry must contact USDA, Wildlife Services or the U. S. Fish and Wildlife Service in Lakewood, CO to determine the establishment and location of a livestock depredation area in Utah

(A) The Division does not provide livestock depredation area information.

(B) The Master Class falconer must have permission from the private landowner to capture a golden eagle on private lands.

(16) Other special provisions for obtaining raptors for falconry

(a) A permittee may receive assistance from another individual in capturing a wild raptor, but the permittee must be present at the capture site

(b) Regardless of the assistance of another person in capturing a wild raptor:

(i) The permittee is always considered to be the individual who removes the bird from the wild; and

(ii) the permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(c) A permittee with a long-term or permanent physical impairment that prevents their attendance at the capture of a raptor for use in falconry, or is otherwise unable to be present at the immediate location where the raptor is taken from the wild, may contact a General or Master Class falconer only to capture a raptor on their behalf.

(i) The impaired permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(ii) The raptor will count against the take of wild raptors that the impaired permittee is allowed in any year.

(iii) The raptor will not count as one of the two replacement raptors the General or Master Class falconer who offers assistance is allowed to capture in any year.

(iv) The raptor will not count as being taken from the wild by the permittee acting on behalf of the impaired permittee.

(d) Individuals authorized to do so may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are legally authorized to possess the raptor.

(e) A permittee may transfer a raptor to another permittee who is legally authorized to possess the raptor, provided there is no pecuniary consideration for the transfer.

(i) The number of wild caught or captive-bred raptors transferred to a permittee may not exceed the established possession limit for each permit class.

(f) A licensed falconer may acquire directly from a rehabilitator a raptor of any age or species that the falconer is permitted to possess.

(i) A wild raptor acquired for falconry from a rehabilitator will count as one of the raptors the falconer is allowed to take from the wild that calendar year.

R657-20-14. Raptors Injured Due to Falconer Trapping Efforts.

(1) Falconers that injure a raptor during trapping efforts are responsible for the costs of care and rehabilitation of the injured raptor.

(a) An injured raptor retained by the permittee must be placed on the permittee's falconry permit.

(b) The injured raptor must be treated by a veterinarian or a permitted wildlife rehabilitator.

(c) The injured raptor must be immediately transported to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee.

(d) The injured raptor will not count against the permittee's allowed take or the permittee's possession limit.

R657-20-15. Recapture of Falconry Raptors.

(1) A falconry raptor that has been lost may be recaptured at any time without the need to purchase a Raptor Capture Permit.

(2) Recapture of a lost or escaped "wild" raptor is not considered to be the taking of a raptor from the wild.

(3) A raptor wearing falconry equipment or a lost or escaped captive-bred raptor may be recaptured at any time by any other permitted falconer - even if the permittee performing the recapture is not allowed to possess the species.

(4) A recaptured raptor will not count against a permitted falconer's possession limit, nor will its recapture from the wild count against the permitted falconer's replacement limit.

(a) A recaptured falconry raptor must be returned to the permittee who lost it if that individual may legally take possession.

(i) Disposition of a recaptured falconry raptor where the permittee's legal authority to possess the bird is in question will be determined by the Division.

(ii) A recaptured falconry raptor temporarily held for return to the permittee who lost it will not count against the possession or replacement limit on take of raptors from the wild if the individual temporarily holding the raptor has reported the recapture to the Division.

R657-20-16. Flying a Hybrid Raptor in Falconry.

(1) When flown free, a hybrid raptor must have at least two attached radio transmitters for tracking.

R657-20-17. Hacking of Falconry Raptors and other Training Techniques.

(1) A General or Master Class Falconer only may hack a falconry raptor or raptors.

(2) Raptors at hack count against possession limits and must be a species authorized for possession.

(3) Hybrid raptors at hack must have two attached and functioning radio transmitters.

(4) Raptors are not to be released at hack near the nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by the raptor at hack.

(a) The Division must be notified prior to hacking a falconry raptor.

(b) Information on federally-listed species can be obtained from the Service.

(5) Use of other falconry training or conditioning techniques.

(a) Other acceptable falconry practices may be used, such as the use of tethered flying, lures, balloons, or kites in training or conditioning raptors for falconry.

(b) Falconry raptors may be flown at pen-raised animals or at bird species not protected under this rule or the Migratory Bird Treaty Act.

R657-20-18. Permission to Conduct Falconry Activities on Public or Private lands.

(1) A falconer must comply with all applicable Federal, State, local, or tribal laws regarding falconry activities, including hunting, on private, public, and tribal lands.

(a) All falconry activities shall be conducted consistent with the trespass requirements in Section 23-20-14.

(b) A person may not engage in any falconry activity on Tribal trust lands without authorization.

(2) Raptor training is not allowed on state waterfowl and wildlife management areas without authorization.

(3) Practicing the sport of falconry without permission is prohibited on all National Parks in Utah

(4) Practicing the sport of falconry without permission is prohibited on all Utah state Parks.

R657-20-19. Practicing Falconry in the Vicinity of a Federally Listed Threatened or Endangered Animal Species.

(1) Individuals practicing falconry must ensure that such activities do not result in the take of federally listed threatened or endangered wildlife.

(2) Under the federal Endangered Species Act:

(a) "Take" means "to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct".

(b) "Harass" means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering; and

(c) "Harm" means an act that actually kills or injures wildlife

(3) Information about threatened or endangered species that may occur in Utah is available by contacting the Service or the Division.

R657-20-20. Releasing a Falconry Raptor to the Wild.

(1) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may not be permanently released into the wild.

(a) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may be transferred to another falconry permittee authorized for possession.

(2) A raptor that is native to the State of Utah and captive-bred may not be permanently released into the wild without prior authorization from the Division.

(a) Once authorization for release of a captive-bred native raptor is received, the raptor must be hacked (allow it to adjust) to the wild at an appropriate time of year and at an appropriate location as determined by the falconer.

(b) The falconry or captive-bred band must be removed and release of the bird reported to the Division in accordance with Section R657-20-24.

(3) If the species to be released is native to the State of Utah and was taken from the wild, the raptor may be released only at an appropriate time of year and at an appropriate location as determined by the falconer.

(a) If the raptor is banded, the band must be removed and release of the bird reported to the Division in accordance with Section R657-20-24.

R657-20-21. Reporting Requirements.

(1) All activities, including wild take, acquisition, transfer, exchange, band/reband or microchip implant, loss (if not recovered within 30 days), recapture, injuries, and theft of any falconry raptor must be reported to the Division within 10 business days of the date of the event, as follows:

(a) Submit to the Division a completed paper Form 3-186a by mail or email; and

(b) Enter the required information in the electronic database located at http://permits.fws.gov/186A

(2) A permittee must retain copies of all electronic database submissions documenting take, transfer, loss, rebanding or micro chipping or any other transaction for each falconry raptor for up to 5 years after the given transaction or event has taken place.

(3) Date of capture, sex of the raptor, and location of the capture must be recorded on the Raptor Capture Permit for all species.

(a) Nest locations are held for use by the Division's sensitive species biologists and will not be made available to the public.

(4) All Resident falconers holding a valid falconry COR must submit a completed falconry Annual Report to the Division by January 31 of each year, as follows:

(a) By December 31 of each year, the Division will provide each resident falconer with an annual report form.

(b) Each resident falconer must complete the annual report and return the report to the Division by the following January 31.

R657-20-22. Unintentional Take of Protected Wildlife by a Falconry Raptor.

(1) A falconry raptor may be allowed to feed on a prey animal taken unintentionally, provided the prey animal is not taken into the falconer's possession.

(2) Unintentional take of any federally listed threatened or endangered species must be reported to the Division and the U. S. Fish and Wildlife Ecological Services Field Office in Salt Lake City within 48 hours of the take event.

(3) Unintentional take of any Utah protected wildlife must be reported to the Division within 48 hours of the take event.

R657-20-23. Banding or Tagging Raptors Used in Falconry.

(1) A falconer who has captured or acquired a wild northern goshawk, wild Harris's hawk (Parabuteo unicinctus), wild peregrine falcon, or wild gyrfalcon must band the raptor with a permanent, nonreusable, black-colored numbered Service leg band.

(a) A falconer must contact the Division for information on obtaining and disposing of bands.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(2) Raptors bred in captivity must be banded with a Service seamless metal band described in 50 CFR 21 Section 21.30, or plastic, numbered Service yellow band.

(a) Unbanded raptors, or black, or yellow banded raptors may not be sold, traded or bartered in any way.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(c) Removal or loss of a seamless band must be reported to the Division within 10 business days of the event and a replacement non-reusable band attached to the raptor.

(d) New and replacement band or microchip information must be reported to the Division pursuant to Section R657-20-24.

(3) In the event a non-reusable band is removed or lost from a banded raptor, the removal or loss of the band must be reported to the Division pursuant to Section R657-20-24 and a replacement band requested.

(a) Immediately upon rebanding the raptor, the required information must be submitted to the Division pursuant to Section R657-20-24

(4) A band may not be altered, defaced, or counterfeited.

(5) Exemptions for banding of raptors will be considered on a case-by-case basis, as follows:

(a) Documented health or injury problems for a raptor that are caused by the band

(b) A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor.

(c) If the raptor is a wild northern goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon, the band must be replaced with an ISO-compliant microchip.

(i) Substituting a microchip for a band on a wild goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon will not be authorized unless it has been demonstrated that a band causes an injury or a health problem for the raptor.

R657-20-24. Importation Requirements for Residents and Nonresidents.

(1) A person is not required to obtain a special COR from the Division to import a raptor brought into Utah from another state when the raptor is imported and used for falconry purposes.

(a) Importation of a raptor used for any purposes other than falconry is governed by Rule R657-3.

(b) A raptor imported into Utah is required to have:

(i) A certificate of veterinary inspection from the state, tribe, or territory of origin; and

(ii) An entry permit number issued through the Utah Department of Agriculture, Animal Health Office pursuant to R58-1-4.

(2) Any raptor brought into the state on a permanent basis must be reported to the Division pursuant to Section R657-20-24

R657-20-25. Falconry Meets or Trials.

(1) Falconers participating in falconry meets or trials must possess a valid falconry license and federal falconry permit, if applicable.

(2) A falconry meet license is not required for participation in a falconry trial.

(3) A falconry meet or trial may not be held on state waterfowl and wildlife management areas from April 1 through August 15, except in those areas approved by the Division.

(4) An organizer of a falconry meet must obtain prior approval from the Wildlife Board for non-residents to purchase a 5-day non-resident meet license.

(5) A nonresident entering Utah to participate in the sport of falconry at an organized meet must be 12 years of age or older and must obtain a nonresident falconry meet license if hunting protected wildlife.

(6) A falconry meet license may be obtained by completing an application and submitting the application and appropriate fees to the Division.

(7) A falconry meet license is valid only for nonresidents and only for five (5) consecutive calendar days as designated on the license.

(8) The holder of a nonresident falconry meet license may engage in the sport of falconry on protected wildlife during the specified five-day period in accordance with the applicable proclamations of the Wildlife Board.

(9) A nonresident participating in an organized meet must provide a health certificate and an entry permit number obtained from the Utah Department of Agriculture, Animal Health Section, on each raptor brought into the state.

R657-20-26. Use of Pen-Reared Game Birds for Meets, Trials and Training.

(1) Any falconer using pen-reared game birds for meets, trials or training must have an invoice or bill of sale or a copy thereof in their possession showing lawful personal possession or ownership of such birds.

(2) Pen-reared game birds may be held in possession no longer than 60 calendar days unless the person possessing the pen-reared game birds first obtains a private aviculture COR as provided in Rule R657-4.

(3) Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released except as provided in Subsection (c).

(a) Aluminum leg bands may be purchased at any Division office.

(b) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(c) Each pen-reared game bird used on a commercial hunting area may be released without marking.

(4) Pen-reared game birds used for a meet may be released only on the property specified and only during the dates approved for the falconry meet.

(5) Released pen-reared game birds may be taken using falconry raptors, as follows:

(a) By the individual who released the pen-reared game birds, or by any individual participating in the meet; and

(b) Only during the approved dates of the meet.

(6) Once released, any pen-reared game birds that leave the property where the meet is held or are not retrieved at the conclusion of the meet become the property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(7) Pen-reared game birds used for training raptors, or for a trial that escape or are not recovered on the day of the training, or pen-reared game birds that escape, become property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game and Waterfowl proclamations of the Wildlife Board and elsewhere in this rule.

R657-20-27. Use of Feathers and Carcasses.

(1) Feathers that a falconry bird or birds molt may be used for imping.

(a) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.

(i) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United states.

(ii) Licensed falconers may not buy, sell, or barter molted raptor feathers.

(b) Molted feathers from a falconry bird, except golden eagle feathers, may be donated to any person or institution with a valid permit for possession.

(c) Except for primary or secondary wing feathers or rectrix (tail) feathers from a golden eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.

(i) Molted feathers may be left where they fall, stored for imping, or destroyed.

(ii) A licensed falconer possessing a golden eagle must collect any molted flight feathers and rectrices.

(iii) Collected golden eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(d) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(i) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a golden eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a golden eagle, that was either banded or micro chipped prior to its death may be retained by the licensed falconer.

(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(A) The mounted raptor may be used in conservation education programs.

(B) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(C) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(d) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within 10 calendar days of the death of the

bird or after final examination by a veterinarian to determine cause of death.

(e) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as long as they possess a valid falconry COR, provided:

(i) The feathers are not be bought, sold, or bartered; and

(ii) The paperwork documenting lawful possession of the deceased raptor is retained.

R657-20-28. Other Uses of Raptors.

(1) Transfer of wild raptors captured for falconry to other permitted uses.

(a) A wild-caught falconry raptor may be transferred to a person authorized to possess raptors for propagation purposes only after the raptor has been used in falconry for at least:

(i) 12 months from the date of capture for a sharp-shinned hawk, Cooper's hawk, merlin, or American kestrel; and

(ii) 24 months from the date of capture for all other falconry raptors.

(b) The time periods imposed in Subsection (1)(a) for transferring a wild-caught falconry raptor to a person authorized to possess raptors for propagation purposes may be waived by the Division if the raptor has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry.

(i) In order to permanently transfer an injured raptor to a propagation permit, the falconer must provide the Division and the Federal migratory bird permits office that administers propagation permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(c) Upon transfer of a wild raptor to a propagation permit, the falconer must provide a copy of the 3-186A form documenting acquisition of the raptor by the propagator to the Division and the Federal migratory bird permit office that administers propagation permits.

(2) Transfer of captive-bred falconry raptors to other permitted uses.

(a) Captive-bred falconry raptors may be transferred to another person if the recipient is authorized for possession.

(3) Use of raptors possessed for falconry in captive propagation

(a) Raptors possessed for falconry may be bred in captivity if the falconer or the person overseeing the propagation has the necessary permits.

(b) Formal transfer of a raptor from a falconry permit to a captive propagation permit is required if the raptor is to be permanently used for propagation.

(c) Formal transfer of a raptor from a falconry permit to a captive propagation permit is not required if the raptor is used for propagation less than 8 months in a year.

(i) The licensed propagator must have a signed and dated statement from the falconer authorizing the temporary possession, plus a copy of the falconer's original FWS Form 3-186A for that raptor.

(4) Use of falconry raptors in conservation education programs.

(a) A General or Master Class falconer may use a falconry raptor in conservation education programs presented in public venues.

(i) A Federal education permit is not required to conduct conservation education activities using a falconry raptor held under a Utah falconry COR.

(ii) In order to permanently transfer an injured raptor to an education permit, the falconer must provide the Division and the Federal migratory bird permits office that administers education permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(b) Conservation programs may be presented by an Apprentice Falconer who is accompanied by their General or Master Class sponsor.

(c) Raptors used to present conservation programs must primarily be used for falconry.

(d) A falconer may charge a fee for presentation of a conservation education program.

(i) The fee charged may not exceed the amount required to recoup costs of presenting the conservation education program.

(e) When presenting conservation education programs, the falconer must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

(f) A falconer may not give presentations using a falconry raptor that do not address falconry and conservation education.

(g) The falconer is responsible for all liability associated with conservation education activities undertaken.

(5) Other educational uses of falconry raptors.

(a) A falconer may allow photography, filming, or other similar uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(i) A falconer may not be paid or otherwise compensated for such activities.

(b) A falconer may not use falconry raptors or permit the use of falconry raptors to make movies, commercials, or in other commercial ventures that are not related to the practice of falconry or the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(c) Falconry raptors may not be used for:

(i) Commercial entertainment for advertisements;

(ii) promoting or endorsing any business, company, corporation, or other organization; or

(iii) promoting or endorsing any product, merchandise, good, service, meeting, or fair, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(6) Assisting in rehabilitation of raptors in preparation for release.

(a) A General or Master Class Falconer may assist a permitted migratory bird rehabilitator in conditioning raptors in preparation for their release to the wild.

(i) The falconer may keep the raptor being rehabilitated in their facilities up to 180 calendar days.

(ii) The rehabilitator must provide the falconer with a letter or form that identifies the raptor and explains that the falconer is assisting in the rehabilitation of the raptor to be released.

(iii) Facilities where the raptor will be temporarily housed must adhere to standards outlined in Sections R657-20-7, R657-20-8, and R657-20-9 of this rule.

(iv) The falconer is not required to add any raptor possessed for rehabilitation to their COR; the raptor will remain under the permit of the rehabilitator.

(v) The falconer must permanently release any raptor capable of sustaining itself in the wild or return it to the rehabilitator within the 180-day timeframe in which the rehabilitator is authorized to possess the raptor, unless the Division authorizes the falconer to retain the bird for longer than 180 calendar days.

(7) Using a falconry raptors in abatement activities.

(a) Abatement activities may only be conducted with captive bred raptors.

(b) A Master Class falconer may conduct abatement activities with raptors possessed for falconry and receive compensation for such activities, if the falconer is in possession

of a Special Purpose Abatement permit issued by the Service.

(c) A General Class falconer may conduct abatement activities only as a subpermittee of a Master Class falconer that possesses an abatement permit.

(d) An Apprentice Class falconer may not conduct abatement activities.

(8) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the Division as provided in Rule R657-3 and the appropriate authorization from the Service.

KEY: wildlife, birds, falconry
April 23, 2013 23-17-7
Notice of Continuation December 12, 2011 50 CFR 21

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-340. Emergency Vehicles.
R722-340-1. Purpose.

This rule explains how vehicles can be designated as "authorized emergency vehicles." Authorized emergency vehicles shall be referred to in this rule as "emergency vehicles."

R722-340-2. Authority.

This rule is authorized by Section 41-6-1.5 and Subsection 53-1-108(1)(c).

R722-340-3. Definitions.

As used in this rule:

(1) "Emergency" or "emergencies" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property and justifies the operator of a vehicle to exercise the driving privileges in Subsection 41-6-14(2).

(2) "Industrial ambulance" means an ambulance that is owned and operated by a private company for the sole benefit of its employees.

R722-340-4. Publicly Owned Emergency Vehicles.

(1) A publicly owned fire department vehicle, or publicly owned police vehicle can be designated as an emergency vehicle if the vehicle:

(a) responds to emergencies;

(b) is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(c) is properly insured; and

(d) is approved as an emergency vehicle by the political subdivision that owns it.

R722-340-5. Privately Owned Emergency Vehicles.

Privately owned vehicles can be designated as emergency vehicles by meeting the requirements set forth in this rule.

R722-340-6. Categories of Privately Owned Emergency Vehicles.

(1) Privately owned emergency vehicles shall be divided into the following categories:

(a) private fire response vehicles;

(b) private police vehicles;

(c) private search and rescue vehicles; and

(d) private ambulance vehicles.

R722-340-7. Private Fire Response Vehicles, Private Police Vehicles, and Private Search and Rescue Vehicles.

(1) A private fire response vehicle, private police vehicle, or private search and rescue vehicle can be designated as an emergency vehicle if:

(a) the vehicle is used on a part time basis to assist a governmental agency in responding to emergencies;

(b) the owner of the vehicle receives written authorization to operate the vehicle as an emergency vehicle from the sheriff, chief of police, or fire chief of the governmental agency that the vehicle is authorized to assist;

(c) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(d) the vehicle is licensed and has a current safety inspection certificate; and

(e) the governmental agency that authorizes the vehicle to operate as an emergency vehicle has adopted written policies regarding the operation of emergency vehicles in their jurisdiction. The policies shall require compliance with the statutory restrictions and requirements of Title 41, Chapter 6.

R722-340-8. Ambulance Vehicles.

(1) A publicly owned or privately owned ambulance vehicle can be designated as an emergency vehicle if the vehicle is licensed by the Utah Department of Health, Bureau of Emergency Medical Services to provide emergency and non-emergency ambulance services under Title 26, Chapter 8.

(2) An industrial ambulance vehicle can be designated as an emergency vehicle if:

(a) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(b) the vehicle is properly insured;

(c) the vehicle is licensed and has a current safety inspection certificate; and

(d) the company that owns the vehicle receives written authorization to operate the vehicle as an emergency vehicle from:

(i) the sheriff of the county in which the company is located; and

(ii) the chief of police of the city, if any, in which the company is located.

KEY: emergency vehicle
September 11, 1997 41-6-1.5
Notice of Continuation April 22, 2013 53-1-108(1)(c)

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-900. Review and Challenge of Criminal Record.
R722-900-1. Purpose.

Subsection 53-10-108(8)(a) requires the Commissioner of Public Safety to establish procedures to allow an individual to review his criminal history record information. Subsection 53-10-108(8)(c) requires the Commissioner to establish procedures to allow an individual to challenge the completeness and accuracy of his criminal history record information as contained in the department's computerized criminal history files. The purpose of this rule is to establish those procedures.

R722-900-2. Authority.

This rule is authorized by Sections 53-10-108 and 63G-3-201.

R722-900-3. Review.

An individual may review the department's criminal history record information about him, by contacting the Bureau of Criminal Identification (BCI) and:

(a) filling out an application provided by BCI;
(b) providing a set of fingerprints;
(c) providing a copy of a government issued photo i.d.;
(d) filling out and signing a criminal history waiver form provided by BCI; and
(e) paying a $10 processing fee.

R722-900-4. Application by Mail.

(a) Individuals who are unable to apply in person may obtain an application from BCI, be fingerprinted at a local law enforcement agency, and then mail the completed application, fingerprints, signed waiver, and $10 processing fee to BCI at Box 148280, Salt Lake City, Utah 84114-8280.

(b) The local law enforcement agency verifies the identity of the individual by checking a government issued photo i.d. at the time of fingerprinting and signs the application form.

R722-900-5. Challenge.

(a) An individual may challenge the completeness and accuracy of his criminal history record information by filling out a challenge form provided by BCI. The submittal of a challenge form will be handled as an informal adjudicative proceeding in accordance with Section 63G-4-203. If the department denies the challenge, no further hearing, review, or reconsideration shall be granted. The individual making the challenge will be required to prove to the satisfaction of BCI through the use of appropriate documentation that the department's criminal history record information is incomplete or inaccurate.

(b) If BCI is satisfied that the individual has sufficiently documented that his/her criminal history record information is incomplete or inaccurate, BCI will amend the individual's files accordingly.

(c) An individual who is dissatisfied with the decision made by BCI regarding the completeness or accuracy of the department's criminal history record information on him/her, may appeal the decision to district court in accordance with Section 63G-4-402.

KEY: criminal records
December 15, 1998 53-10-108(8)
Notice of Continuation April 10, 2013

R765. Regents (Board of), Administration.
R765-136. Language Proficiency in the Utah System of Higher Education.
R765-136-1. Purpose.

To provide for the use of languages other than English for communications with non-English speakers, to promote English proficiency, and to encourage enhanced language training in the Utah System of Higher Education.

R765-136-2. References.

2.1. Utah Code 53B-2-106 (Duties and Responsibilities of the President).

2.2. Utah Code 63G-1-201 (Official State Language).

R765-136-3. Policy.

3.1. Official State Language - English is the official language of Utah and is the sole language of the government. Pursuant to Utah Code 63G-1-201 institutions and the Utah Higher Education Assistance Authority (UHEAA) may use languages other than English for communications with non-English speakers in accordance with this rule.

3.2. Communications in Order to Encourage English Proficiency - System institutions and UHEAA may use languages other than English to establish communications with non-English speakers. These communications may explain educational opportunities and institutional or UHEAA policies and procedures in order to encourage and support participation in institutional and UHEAA education, training and other related programs, including English proficiency training. Such communications shall promote the principle that non-English speaking children and adults should become able to read, write, and understand English as quickly as possible.

3.3. Foreign Language Instruction - System institutions and UHEAA shall continue to emphasize and support foreign language instruction as an integral and important function of Utah higher education.

3.4. English as a Second Language Instruction - System institutions and UHEAA shall support, initiate, continue and expand formal and informal programs in English as a Second Language.

KEY: English proficiency, language proficiency, higher education
May 29, 2003 **53B-2-106**
Notice of Continuation April 29, 2013 **63G-1-201**

R765. Regents (Board of), Administration.
R765-254. Secure Area Hearing Rooms.
R765-254-1. Purpose.

To provide guidelines for the establishment of institutional policy and standards for secure areas associated with hearing rooms on the campuses of the System.

R765-254-2. References.

2.1. Utah Code Section 53B-2-106 (Duties and Responsibilities of the President).

2.2. Utah Code Section 53B-3-103 (Power of the Board to Adopt Rules and Enact Regulations).

2.3. Utah Code Section 76-8-311.1 (Secure Areas -- Items Prohibited -- Penalty).

2.4. Utah Code Title 76, Chapter 8, Part 7 (Criminal Offenses Against Colleges and Universities).

2.5. Utah Code Section 76-10-306 (Explosive, Chemical, or Incendiary Device and Parts -- Definitions -- Persons Exempted -- Penalties).

2.6. Utah Code Section 76-10-523.5 (Compliance with Rules for Secure Areas).

2.7. Policy and Procedures R120, Bylaws of the State Board of Regents; Section 3.3.3.1. (Responsibility of Presidents).

2.8. Policy and Procedures R253, Campus Discipline.

R765-254-3. Policy.

3.1. Secure Area Associated with a Hearing Room - A USHE institution may establish a secure area to protect a hearing room as prescribed in Utah Code Section 76-8-311.1 and prohibit or control in that area any firearm, ammunition, dangerous weapon, or explosive. Only one area at each institution shall be designated a secure area for the purpose of a hearing room at any given time.

3.2. Size of Secure Area - A secure area associated with a hearing room shall be as large as warranted by the number of individuals involved in the hearing.

3.3. Duration of Secure Area Designation - The restriction of firearms, ammunition, dangerous weapons, or explosives in the secure area associated with a hearing room shall be in effect only during the time the secure area hearing room is in use for hearings and for a reasonable time before and after its use.

3.4. Notice to Invitees - An individual required or requested to attend a hearing in a secure area hearing room shall be notified in writing of the requirements related to entering a secured area associated with a hearing room under this rule and Utah Code Section 76-8-311.1.

3.5. Notice at Each Entrance - At least one notice shall be prominently displayed at each entrance to the secure area associated with a hearing room in which a firearm, ammunition, dangerous weapon, or explosive is restricted.

3.6. Secure Weapons Storage - Provisions shall be made to provide a secure weapons storage area so that persons entering the secure area may store their weapons prior to entering the secure area. The institution shall be responsible for weapons while they are stored in the storage area.

3.7. Reasonable Means to Detect Violations - Reasonable means such as mechanical, electronic, x-ray, or similar devices may be used to detect firearms, ammunition, dangerous weapons, or explosives contained in the personal property of or on the person of any individual attempting to enter a secure area associated with a hearing room.

3.8. Criminal Penalties - Any person who knowingly or intentionally transports into a secure area of an institution any firearm, ammunition, or dangerous weapon is guilty of a third degree felony. Any person violates Utah Code Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a secure area of an institution.

3.9. Institutional Enforcement - As provided in Utah Code Section 53B-3-103(3), an institution may enforce these policies by the assessment of fines, the imposition of probation, suspension, or expulsion from the institution, the revocation of privileges, the refusal to issue certificates, degrees, and diplomas, through judicial process, or by any reasonable combination of these alternatives.

3.10. Compliance with Rules a Defense - It is a defense to any prosecution under Utah Code Section 76-8-311.1 and these rules that the accused, in committing the act made criminal by that section, acted in conformity with the Board's and institution's rules or policies established pursuant to that section.

KEY: secure area hearing rooms
May 29, 2003 **76-8-311.1**
Notice of Continuation April 29, 2013

R765. Regents (Board of), Administration.
R765-555. Policy on Colleges and Universities Providing Facilities, Goods and Services in Competition with Private Enterprise.
R765-555-1. Purpose.

To establish policy and guidelines on public colleges and universities providing facilities, goods and services in competition with the private sector.

R765-555-2. References.

2.1. 53B-1-103

R765-555-3. Definitions.

3.1. "Institutions" - colleges and universities which are part of the Utah System of Higher Education.

3.2. "Campus Community" - an institution's students, faculty, staff, and campus guests.

3.3. "Services" - an institution's facilities, goods, and services.

R765-555-4. Policy.

Institutions shall not sell or provide services to their campus community or to the general public except as set forth below.

4.1. Services Necessary for the Education of Students or Basic Research - Institutions are expected to provide their campus communities appropriate services which are necessary for the education of students, or the performance of basic research in accordance with the institution's mission as established by the Utah State Board of Regents. This responsibility includes, but is not limited to, instructional, research, and public service programs; libraries; computing programs; and other academic support services.

4.2. Educationally Related Activities - Institutions may provide other services to their campus communities even though such services are practically available elsewhere providing that the services satisfy reasonable educationally related needs of the campus community, e.g. campus newspapers, campus bookstore, campus dining facilities, student housing, etc., and provided such services are not advertised to the general public and are not generally provided to persons who are not members of the campus community.

4.3. Services to Persons Other Than Members of the Campus Community - An institution shall not provide services to persons other than members of the campus community unless:

4.3.1. The service offers a substantial and valuable educational or research experience for registered students and faculty;

4.3.2. The service fulfills the institution's public service mission;

4.3.3. The service is incidental to the ordinary and authorized function of a campus entity, i.e., occasional sales by bookstores, food service, etc., to campus visitors;

4.3.4. The service consists of recreational, cultural, and athletic events; health services and medical treatment; public service radio and TV broadcasting; events or functions which have as their principal purposes the improvement of relations between the institutions and the general public; and sales of contributed services, if related to fund raising activities;

4.3.5. The equivalent service is not available in the local area; or

4.3.6. The service to persons not members of the campus community has been specifically authorized by the State Board of Regents.

4.4. By-Products of Research and Instruction - Surplus Property - Institutions may dispose of by-products of research and instruction undertaken by an institution by sale to persons not members of the campus community, provided such products shall not be sold at less than market value. Institutions may dispose of surplus property by sale to persons not members of the campus community providing such items are disposed of in accordance with state laws.

4.5. Private Enterprise on Campus - Private enterprise entities which operate service or auxiliary units on a campus under contract with an institution are subject to this policy.

4.6. Exceptions Authorized by State Board of Regents - Exceptions to this policy may be authorized by the State Board of Regents if it determines, upon consideration and weighing of the various interests and public policies pertinent to providing the facilities, goods or services in competition with private enterprise, that the public interest favoring an exception outweighs the interest favoring denial of an exception.

KEY: colleges, higher education, free enterprise*, educational policy
July 2, 1997 53B-8-102
Notice of Continuation April 29, 2013

R765. Regents (Board of), Administration.
R765-605. Utah Centennial Opportunity Program for Education.
R765-605-1. Purpose.

To provide Board of Regents ("the Board") policy and procedures for implementing the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997, 1998 and 2004 by S.B. 40, Cesar Chavez Scholarship Program.

R765-605-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.

2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 106.

2.3. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.

2.4. State Board of Regents Policy R512, Determination of Resident Status.

R765-605-3. Effective Date.

These policies and procedures are effective October 16, 2004.

R765-605-4. Policy.

4.1. Program Description - UCOPE is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), the Legislature finds "that the general welfare and well-being of the state are directly related to the educational levels and skills of the citizens of the state, and that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah postsecondary institutions is a necessary component for ensuring access to postsecondary education and training as the state enters its second century of statehood". Program funds may be used for either grants or work-study awards to students with demonstrated financial need, with no more than 3.0% of funds allocated to an eligible institution permitted to be used for administrative costs. These are the only purposes for which program funds may be used.

4.2. Award Year - The award year for UCOPE is the twelve-month period designated by an eligible institution, coinciding approximately with the state fiscal year beginning July 1 and ending June 30. An institution may choose to have its Summer enrollment period as either the first or the final enrollment period of the award year for UCOPE purposes.

4.3. Institutions Eligible to Participate - Eligible institutions include the ten institutions of the Utah System of Higher Education, and Utah private nonprofit postsecondary institutions which are accredited by a regional accrediting organization recognized by the Board. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges. Utah private nonprofit postsecondary institutions accredited by the Northwest Association of Schools and Colleges are Brigham Young University, Westminster College and LDS Business College.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from UCOPE funds, a student must:

4.4.1. Be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program.

4.4.3. Be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs, and, to qualify for a Cesar Chavez Scholarship, have a family income less than 200% of the federal poverty guideline issued each year by the U.S. Department of Education for the family size.

4.5. Program Administrator - The program administrator for UCOPE is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Determination of Funds Available for The Program - Funds available for UCOPE allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item are applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunities Grant Program funds, and partial matching for the Federal College Work Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of Leveraging Educational Assistance Partnership Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for UCOPE.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for UCOPE, and any funds from other sources contributed for UCOPE, are added together with funds available for UCOPE pursuant to subsection 4.6.1, to determine the total amount available for the program.

4.7. Allotment of Program Funds To Institutions.

4.7.1. The chief executive officer or chief student services officer of an eligible institution wishing to participate in UCOPE is required to submit to the program administrator a letter of intent to participate by the 15th of May preceding the beginning of the fiscal year (July 1 through June 30), and to include in the letter of intent a certification, subject to audit, of: (a) the total dollar amount of Federal Pell Grant funds awarded

in the most recent completed award year to all students at the institution; and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit its letter of intent with the required Pell Grant information by the specified date constitutes an automatic decision by an eligible institution not to participate in the program for the specific fiscal year.

4.7.3. An eligible institution which submits a qualifying letter of intent by the specified date for a specific fiscal year is a participating institution for that fiscal year.

4.7.4. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.5. The program administrator sends official notification of its allotment, together with a program participation agreement, and blank copies of the format for institutional UCOPE reports to be submitted within 30 days of the end of the applicable fiscal year, to the chief executive officer of each participating institution, by the 20th of May preceding the fiscal year.

4.8. Annual Institutional Participation Agreements - To receive UCOPE funds for an award year, a participating institution is required to submit a participation agreement, signed by the chief executive officer, accepting the funds and agreeing to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution.

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

4.8.1.2(a). For the 1996-97 award year and award years 2000-01 and 2001-02, if the institution's allotment for the fiscal year is $100,000 or more, the institution will place at least 30% of the total amount of program funds allotted to it for the award year in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.9 herein). For award years 1997-98 through 1999-2000, if the institution's allotment for the fiscal year is $50,000 or more, the institution will place at least 50% of the total amount of program funds allotted to it in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under FWSP regulations or in jobs provided in accordance with Section 4.9.

4.8.1.2(b). For any award year, the institution may, at its option, place all or any portion of its allotted UCOPE funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.0 herein).

4.8.1.2(c). Work-study payments from the institution's UCOPE work-study budget, for jobs under either FWSP regulations or UWSP policies, will be counted as UCOPE awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work-study jobs provided using UCOPE funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as UCOPE work-study awards. No portion of the institution's UCOPE allotment may be used as institutional match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections 4.8.1.1 and 4.8.1.2, in a budget to be used only for payment of UCOPE grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as Utah Centennial Opportunity Program Grants.

4.8.1.5. The institution may carry forward or carry back from one fiscal year to another up to 10% of the amount of its UCOPE allocation for the fiscal year, or a larger percentage if approved in advance by the UCOPE program administrator, except for any portion budgeted for administrative expenses pursuant to Section 4.8.1.1.

4.8.2. Determination of Awards to Eligible Students.

4.8.2.1. Student Cost of Attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. UCOPE work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who qualify for Federal Pell Grant assistance.

4.8.2.3. The total amount of any UCOPE grant award to an eligible student in an award year will not exceed $5,000, and the minimum UCOPE grant and/or work-study award to an eligible student will be $300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UCOPE grant award for the year; and

4.8.2.3(b). An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. UCOPE Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules. Work-study wages will be paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used UCOPE grant or work-study funds for other purposes, the institution will disqualify the student from UCOPE eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award

program grants or work-study stipends or both in amounts which, with Federal Stafford, Ford, and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.8. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later overaward of more than $500, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Unit-Record Information - The institution agrees to cooperate with the program administrator and the Commissioner of Higher Education in development of a unit-record data base on student financial aid and related demographic information, to be used for: (a) research into the effects of student financial aid on students' access to and participation in postsecondary education and training; and (b) planning and modifying the design of the program.

4.8.4. Notification and Reports - The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year, and will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

4.8.5. Records Retention and Cooperation in Program Reviews - The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

4.8.6. Dissemination of Employment Opportunity Information - The institution will cooperate with the program administrator in disseminating to its students periodic information provided by the board, regarding employment opportunities determined from marketplace surveys.

4.9. UCOPE Work-Study Program Guidelines - If an institution elects to utilize its UCOPE Work-Study funds for the Utah Work-Study Program (UWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. The institution may establish designated UWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the UWSP institutional job.

4.9.1.2. The hourly wage for the UWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its UCOPE work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from UCOPE and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. The institution may establish designated UWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions.

4.9.2.1. The hourly wage for the UWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.2 , provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. The institution may establish designated UWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions.

4.9.3.1. The hourly wage for the UWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. The institution may establish designated UWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions.

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the UWSP matching job.

4.9.4.3. The hourly wage for the UWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in UWSP jobs which have a relationship to the student's field of study or training.

4.9.6. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a UCOPE-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than UCOPE-allotted funds.

4.10. Cesar Chavez Scholarship - The Cesar Chavez Scholarship Program is part of the Utah Centennial Opportunity Program for Education.

4.10.1. Students Eligible - To qualify for a Cesar Chavez Scholarship, a student must:

4.10.1.1. be an eligible student as defined in Section 53B-13a-102; and

4.10.1.3. have a family income less than 200% of the federal poverty guideline for the family size.

4.10.2. Scholarship Amounts - Cesar Chavez Scholarships shall be awarded in the following amounts:

4.10.2.1. if the scholarship recipient is enrolled at a public institution, an amount not to exceed the total of resident tuition and general fee charges; or

4.10.2.2. if the scholarship recipient is enrolled at a private, nonprofit institution, an amount not to exceed the total of tuition and general fee charges, but a scholarship for a student enrolled at a private, nonprofit institution may not exceed the maximum program grant established by the board for the fiscal year.

4.10.3. Allocation of UCOPE Funds to Cesar Chavez Scholarships - The board may allocate up to 10% of the money appropriated to the board for the Utah Centennial Opportunity Program in Education for the Cesar Chavez Scholarship Program.

KEY: financial aid, higher education
September 1, 2005 53B-8-102
Notice of Continuation April 24, 2013 53B-13a

R765. Regents (Board of), Administration.
R765-606. Utah Leveraging Educational Assistance Partnership Program.
R765-606-1. Purpose.

To provide for the Leveraging Educational Assistance Partnership Program and incorporate by reference Federal statutes and regulations governing this program which awards grants to eligible students attending public or private non-profit institutions of higher education or public postsecondary vocational institutions.

R765-606-2. References.

2.1. Utah Code Section 53B-7-103 (Board Designated State Educational Agent for Federal Contracts and Aid).

2.2. Higher Education Act of 1965, as amended (i.e. U.S. Code Title 20, Chapter 28, Subchapter IV, Part F).

2.3. 34 CFR Parts 600, 668 and 692.

2.4. Education Department General Administration Regulations (EDGAR).

R765-606-3. Definitions.

3.1. "Academic Year" - A period as determined by the educational institution in accordance with U.S. Code Title 20, Chapter 28, Subchapter IV, Part F, Section 1088 to :

3.1.1. require a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least:

3.1.1.1. 24 semester or 24 trimester or 36 quarter hours at an institution that measures program length in credit hours, or

3.1.1.2. 900 clock hours at an institution that measures program length in clock hours.

3.2. "Award Year" - As defined in 34 CFR Part 600.2, namely, the period of time from July 1 of one year through June 30 of the following year.

3.3. "Decentralized Program" - A program which delegates certain functions and sub-allocates LEAP funds to participating institutions for approved awards to LEAP recipients which have been selected by the participating institutions.

3.4. "Full-time Student" - As defined in 34 CFR Part 692.4c, namely, a student carrying a full-time academic workload - other than by correspondence - as measured by both of the following: 1) Coursework or other required activities, as determined by the institution that the student attends or by the State. 2) Tuition and fees normally charged for full-time study by that institution.

3.5. "Full-time Equivalent Students" - A measure of annual instructional output calculated according to the following formulas:

3.5.1. For institutions that measure program length in quarter credit hours, the total number of undergraduate instructional credit hours attributed to the institution's fiscal year divided by 45, plus the total number of graduate instructional credit hours attributed to the institution's fiscal year divided by 30.

3.5.2. For institutions that measure program length in semester credit hours, the total number of undergraduate instructional credit hours attributed to the institutions fiscal year divided by 30, plus the total number of graduate instructional credit hours attributed to the institution's fiscal year divided by 20.

3.5.3. For institutions that measure program length in clock hours, the total number of instructional clock hours attributed to the institution's fiscal year divided by 792.

3.6. "Institution of Higher Education" - As defined in Section 101a of the Higher Education Act of 1965 as amended and 34 CFR Part 600.4.

3.7. "LEAP" - Leveraging Educational Assistance Partnership.

3.8. "Non-Profit" - As defined in 34 CFR Part 77.1 of EDGAR.

3.9. "Participating Institution" - A public or private non-profit institution of higher education or postsecondary vocational institution which has entered into a participation agreement with the UHEAA.

3.10. "Postsecondary Vocational Institution" - As defined in 34 CFR Part 600.6.

3.11. "SLEAP" - Special Leveraging Educational Assistance Partnership

3.12. "Substantial Financial Need" - The difference computed to equal or exceed $200 for an entire academic year between a student's cost of education (including tuition and fees; books and supplies; living expenses such as room and board, personal, miscellaneous, and transportation) and the student's sum of that student's expected family contribution and other student aid to be received.

R765-606-4. Policy.

Part I - Program Administration

4.1 State Board of Regents - The Utah State Board of Regents is the designated state agency for the LEAP program in the state of Utah. The responsibility for administration of the LEAP program has been assigned to the Utah Higher Education Assistance Authority (UHEAA). The Utah LEAP program is administered as a decentralized program.

4.2. Institutional Administration - The President of each institution shall be responsible for the administration of the LEAP program at the institutional level in compliance with Federal and state regulations. The institutional administration of the program may be delegated to the financial aid director or other appropriate institutional officers.

4.3. Fiscal Control and Fund Accounting - UHEAA shall provide fiscal control and fund accounting services for awards made under the program.

4.4. Governing Statutes and Regulations - UHEAA incorporates by reference the following Federal statutes and regulations:

4.4.1. The Higher Education Act of 1965, as amended (i.e. U.S. Code Title 20, Chapter 28, Subchapter IV, Part F);

4.4.2. Final Regulations of the U.S. Department of Education (i.e., 34 CFR Parts 600, 668, and 692); and

4.4.3. Education Department General Administration Regulations (EDGAR)

4.5. State Agency Rules - UHEAA establishes, from time to time, agency rules governing the operation of the Utah LEAP Program in accordance with Federal requirements as referenced in 4.4.1, 4.4.2 and 4.4.3.

4.6. Statutes and Regulations Available - A copy of all Federal and state rules, regulations and statutes directly affecting the Utah LEAP Program can be obtained from UHEAA at the Board of Regents Building, The Gateway, 60 South 400 West, Salt Lake City, Utah 84101-1284.

Part II - Transfer of LEAP Federal Funds

4.7. Transfer of LEAP federal Funds - UHEAA shall:

4.7.1. have a separate account number assigned from the Office of the State Director of Finance for Federal LEAP funds.

4.7.2. ensure that the custodian of Federal funds is the State Treasurer, Utah State Capitol, Salt Lake City.

4.7.3. make disbursements of Federal funds through the State Disbursing Office, Finance Department, Utah State Capitol, Salt Lake City, Utah.

4.7.4. have the receiving and approving officer for Federal funds be the Administrator of the Utah LEAP Program, a UHEAA staff member.

Part III - Allocation of all Federal and State LEAP funds

4.8. Matching of Federal LEAP funds - The state matching funds for the LEAP program are appropriated by the Utah State Legislature to the State Board of Regents for the Utah LEAP program. The Federal funds shall be matched:

4.8.1. at a program level; and

4.8.2. at a level of at least fifty percent state funds to fifty percent Federal funds; and

4.8.3. at a level not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years.

4.9. Allocation of Federal and State LEAP Funds - UHEAA shall allocate Federal and state LEAP funds by using a formula based on the number of Utah resident, full-time equivalent students enrolled at each participating institution during the most recently completed fiscal year. The allocation of funds to a participating institution shall be in the same proportion to the total funds available to all Utah institutions as the number of resident, full-time equivalent students at the participating institution is to the total number of resident, full-time equivalent students at all participating institutions.

4.10 Inability of an Institution to Use the Full Allocation - When an institution indicates the inability to use its total allocation of LEAP Program funds in compliance with the guidelines during an award year, UHEAA may reallocate such excess funds to other eligible institutions within the state or provide for the Federal funds to be reallocated to other states through the U.S. Secretary of Education, as provided in the Federal regulations.

4.11. Disbursements - LEAP funds shall be disbursed by UHEAA on an as needed basis or just prior to the start of a new term. For institutions on a semester system this will be twice a year, for institutions on a quarter system this will be three times a year, for institutions operating on an open enrollment system this will be a minimum of three times a year.

4.12. Participation Agreement - The LEAP funds will be released to an institution upon receipt of a Participation Agreement signed by the President of the institution which certifies that the institution will follow all requirements of the program including the following;

4.12.1. The institution will maintain a separate account for Federal and state LEAP funds under this program.

4.12.2. LEAP funds allocated to institutions will be used only for direct financial assistance to students qualifying under the program.

4.12.3. LEAP funds allocated by UHEAA to support this program will not be transferred by the institution to other student aid programs.

4.12.4. LEAP funds not used by an institution will be returned to UHEAA within 30 days of the institution's determination that the funds will not be used and in no case later than 30 days before the end of the award year.

4.12.5. LEAP funds will not be disbursed to the student prior to the time the student completes registration.

4.12.6. The institution will maintain, on a current basis, adequate records sufficient to demonstrate that the program has been administered in accordance with the program requirements, to file a year-end report, to provide the Department of Education and UHEAA access to all records pertinent to the grant program, and provide student rosters to UHEAA upon request.

Part IV - Student Participation

4.13. President or Designee's Responsibilities - The President of each institution or the President's designee, as the institutional administrator shall:

4.13.1. accept applications for Utah LEAP program funds consistent with institutional policy as it relates to applications, and the provisions of the Act and regulations.

4.13.2. determine the student's eligibility for participation in the program on the basis of an annually documented substantial financial need, using the congressional methodology of needs analysis. If eligible applicants exceed available funding levels, awards will start with the most needy students who meet all other application requirements.

4.13.3. ensure that no student shall be excluded from participation in this program on the basis of sex, race, color, age, religion, handicap, national origin, marital status or other constitutionally or legally impermissible grounds.

4.14. Student Eligibility - To be eligible for a grant from the Utah LEAP Program, a student must:

4.14.1. be a Utah Resident as defined in the Utah code 53B-8-102.

4.14.2. be an eligible student as defined in Section 484 of the Higher Education Act of 1965, as amended, and 34 CFR Part 668.7.

Part V - LEAP Annual Limits

4.15. Maximum Annual Limit - A student may receive an LEAP award up to $2,500 for each award year for which the student is eligible for an LEAP award.

4.15.1. The maximum total grant under this program to any full-time student shall be $2,500 in any academic year.

4.15.2. Summer school awards are to be part of the student's $2,500 maximum.

4.15.3. LEAP awards shall be committed and disbursed before the end of the award year.

4.16. Estimated Cost of Attendance - In no case may the amount of the LEAP award exceed the student's estimated cost of attendance for the award period for which the grant is intended, less the sum of that student's expected family contribution and other student aid to be received.

4.17. Less than Full-time Students - At the discretion of the Financial Aid Officer, grant funds may be awarded to less than full-time students. Aid awarded to less than full-time students shall not exceed that proportion of $2,500 which the less than full-time student's academic work load bears to a full academic work load.

Part VI - Record Retention and Reporting

4.18. Record Retention and Reporting - The President of each institution or the President's designee, as the institutional administrator shall:

4.18.1. maintain adequate records to show the utilization of the LEAP program.

4.18.2. submit such reports and information as may be required by the U.S. Department of Education, UHEAA, or the Utah State Board of Regents in connection with the administration of the program.

4.19. Records to be Maintained - In accordance with 34 CFR Part 692.21, UHEAA requires a participating institution to retain complete and accurate records of each LEAP awarded, including the following:

4.19.1. The Federal student aid application;

4.19.2. A record of each disbursement of grant proceeds; and

4.19.3. Any additional records that are necessary to document the accuracy of reports submitted to UHEAA, the Utah State Board of Regents, or the U.S. Department of Education.

4.20. Records Retention - An institution shall retain the records required for each LEAP award for at least five years after the award is disbursed. The U.S. Secretary of Education, or the Administrator of the Utah LEAP program, may, in particular cases, require the retention of records beyond the three-year minimum period.

4.21. Records Organization - The records must be organized in such a way as to permit ready identification of the current status of each grant. The records specified in subsections 4.19.1 through 4.19.3 of this policy may be stored on microfilm or computer format.

4.22. Records Retention Violations - In the event the institution violates the record retention policy as outlined above, the administrator of the Utah LEAP program, may take such corrective action as is deemed necessary.

Part VII - SLEAP Program

4.23. Special Leveraging Educational Assistance

Partnership (SLEAP) Program - SLEAP assists States in providing grants, scholarships, and community service work-study assistance to eligible students who attend institutions of higher education and demonstrate financial need.

4.24. Related Regulations and Definitions - The LEAP regulations and definitions listed above also apply to the SLEAP Program.

4.25. Program Requirements for the State - To receive SLEAP Program funds for any fiscal year, Utah must:

4.25.1. Participate in the LEAP Program;

4.25.2. Meet the requirements in 34 CFR Part 692.60; and

4.25.3. Have a program that satisfies the requirements in 34 CFR Part 692.21(a), (b), (d), (e), (f), (g), (j), and (k).

4.26. Student Eligibility Requirements - To receive assistance under the SLEAP Program, a student must meet the eligibility requirements of the LEAP Program above.

4.27. Requirements to Receive a SLEAP Allotment - To receive an allotment under the SLEAP Program, UHEAA will:

4.27.1. Submit an application in accordance with the provisions in 34 CFR Part 692.20;

4.27.2. Identify the activities in 4.28 for which it plans to use the SLEAP Federal and non-Federal funds;

4.27.3. Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that the State of Utah spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported as part of its LEAP Program;

4.27.4. Provide an assurance that for the fiscal year prior to the fiscal year for which Utah is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in 34 CFR Part 692.71 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

4.27.5. Ensure that the Federal share will not exceed one-third of the total funds expended under the SLEAP Program.

4.28. Permitted Activities - Utah may use the funds it receives under the SLEAP Program for one or more of the following activities:

4.28.1. Supplement LEAP grant awards to eligible students who demonstrate financial need by:

(a) Increasing the LEAP grant award amounts for students; or

(b) Increasing the number of students receiving LEAP grant awards.

4.28.2. Supplement LEAP community service work-study awards to eligible students who demonstrate financial need by:

(a) Increasing the LEAP community service work-study award amounts for students; or

(b) Increasing the number of students receiving LEAP community service work-study awards.

4.28.3. Award scholarships to eligible students who demonstrate financial need and who:

(a) Demonstrate merit or academic achievement; or

(b) Wish to enter a program of study leading to a career in:

(i) Information technology;

(ii) Mathematics, computer science, or engineering;

(iii) Teaching; or

(iv) Other fields determined by Utah to be critical to the State's workforce needs.

4.29. Administrative Costs - Utah may not use any of the funds it receives under the SLEAP Program to pay any administrative costs.

4.30. Community Service Work-Study Program - When administering its community service work-study program, Utah must follow the provisions in 34 CFR Part 692.30, other than the provisions of paragraph (a)(1) of that section.

KEY: higher education assistance, LEAP, SLEAP
June 30, 2003 53B-7-103
Notice of Continuation April 24, 2013

R994. Workforce Services, Unemployment Insurance.
R994-201. Definition of Terms in Employment Security Act.
R994-201-101. General Definitions and Acronyms.

These definitions are in addition to those defined in Section 35A-4-201.

(1) "Act" means the Utah Employment Security Act, and amendments thereto.

(2) "ALJ" means Administrative Law Judge.

(3) "Appeals Unit" means the Division of Adjudication.

(4) "Board" means the Workforce Appeals Board.

(5) Bona Fide Employment.

"Bona fide employment" is work that was an authentic employer-employee relationship entered into in good faith without fraud or deceit rather than an arrangement or report of non-existent work calculated to overcome a disqualification.

(6) Burden of Proof.

The person or party with the burden of proof has the initial responsibility to show that the fact at issue is worthy of belief. Burden of proof requires proof by a preponderance of the evidence.

(7) Calendar Quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(8) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

(9) Covered Employment.

"Covered employment" is employment subject to a state or federal unemployment insurance laws which can be used to establish monetary eligibility for unemployment insurance benefits. Active military duty in a full time branch of the US military service can be used if the ex-servicemember was honorably discharged and completed his or her first full term of service, or if the separation meets the requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I through (IV) and 20 CFR 614.

(10) Department.

"Department" means the Department of Workforce Services.

(11) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

(12) Itinerant Service.

"Itinerant service" means a service maintained by the Department of Workforce Services at specified intervals and at designated outlying points within the jurisdiction of an Employment Center.

(13) Local Office.

"Local office" means the Employment Center of any geographical area.

(14) MBA means maximum benefit amount.

(15) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association.

(16) Preponderance of Evidence.

A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, more convincing to the mind, evidence that best accords with reason or probability. Preponderance means more than weight; it denotes a superiority of reliability. Opportunity for knowledge, information possessed and manner of testifying determines the weight of testimony.

(17) Separation.

"Separation" means curtailment of employment to the extent that the individual meets the definition of "unemployed" as stated in Subsection 35A-4-207(1) with respect to any week.

(18) Transitional Claim.

A claim that is filed effective the day after the prior claim ends provided an eligible weekly claim was filed for the last week of the prior claim.

(19) WBA means weekly benefit amount.

KEY: unemployment compensation, definitions
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Notice of Continuation April 11, 2013

R994. Workforce Services, Unemployment Insurance.
R994-202. Employing Units.
R994-202-101. Legal Status of Employing Unit.

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to Section 35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

(1) Sole Proprietorship.

A sole proprietorship is a legal entity that is owned by one person. The sole proprietor is the employing unit. The sole proprietor's services are exempt from coverage pursuant to rule R994-208-103(10). The services of the sole proprietor's spouse, children under age 21, and parents are also exempt from coverage and those individuals are not entitled to unemployment benefits based on the compensation received from the sole proprietorship.

(2)(a) Partnership.

A partnership is a legal entity composed of two or more persons or business entities that agree to contribute money, assets, labor, or skills to the business. Each partner shares the profits, losses, and management of the business and each partner is personally and wholly liable for debts of the partnership. The partners are the employing unit. The partners' services are exempt from unemployment coverage and the partners are not entitled to unemployment benefits based on compensation received from the partnership pursuant to rule R994-208-103(11). The services of individuals working for partners who are also employing units, such as corporations and limited liability companies, are subject or exempt as provided under this section. If partners are added or one or more of the partners leaves the partnership, the partnership ceases to exist at the point the change occurs, and any remaining entity becomes a different employing unit. Rule R994-205-102(2) explains partnership family employment that is exempt from coverage.

(b) Limited Partnership (LP) and Limited Liability Partnership (LLP).

LPs and LLPs are partnerships composed of one or more general partners and one or more limited partners. The general partners manage the business and share fully in its profits and losses. Limited partners share in the profits of the business, but their losses are limited to the extent of their investment. The general partner's services are exempt from unemployment insurance coverage, but any payments to limited partners for services are wages subject to unemployment insurance contributions pursuant to rule R994-208-103(11).

(3) Corporation.

A corporation is a legal entity granted a state charter legally recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from those of its owners. The corporation is the employing unit. Corporations must be registered and in good standing with the Utah Department of Commerce. If a corporation is not registered or is in an expired status, it is treated as a proprietorship or partnership, based upon the best available information.

(a) A change of ownership occurs when the corporate assets are sold or transferred according to successorship rule R994-303-106. The sale, transfer, or exchange of corporate stock is not a change of ownership except as specified in rule R994-304-101.

(b) All individuals employed by the corporation, including officers, are employees of the corporation. Compensation to officers who perform services for the corporation is considered wages. Payments to corporate employees of dividends, loans, property distributions, and expenses in lieu of compensation for services may be reclassified as wages by the Department based on the extent and significance of the work performed and the documentation supporting the payments. This applies to all corporations regardless of income tax reporting status. The following payments to officers are generally not wages:

(i) directors fees that are uniform and reasonable;

(ii) reimbursement for expenses that are reasonable and documented. The Department may require receipts to document questionable expenses. Section R994-208-103, contains additional information on expense reimbursements;

(iii) loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; or

(iv) documented return of an investment where the officer has loaned money to, or invested money in, the corporation.

(4) Limited Liability Company (LLC).

A LLC is a legal entity that combines the limited liability protection of a corporation and the pass through taxation of a sole proprietorship or partnership. The LLC is the employing unit and must be registered and in good standing with the Utah Department of Commerce. A LLC that is not registered or is in an expired status is treated as a proprietorship or partnership, based upon the best available information.

(a) Members of a LLC are not employees of the LLC and payments to them are exempt from coverage provided all of the following criteria are met;

(i) the LLC is registered and in good standing with the Utah Department of Commerce,

(ii) the member has a bona fide ownership interest in the LLC and is listed in the articles of organization, the operating agreement, or federal income tax return, and

(iii) the LLC has not been approved by the IRS as an "eligible entity" which allows the LLC to file with the IRS as a corporation. Approval may be obtained by the IRS accepting a written application or form, or the IRS accepting the filing of a U.S. Corporation Income Tax Return or U.S. Income Tax Return for an S Corporation.

(b) A nonmember manager is an employee of the LLC.

(c) Legal actions, subpoenas, and court orders will be issued to a member or manager of record.

(d) Assessments and liens will be issued in the name of the LLC, and not against the members of record.

(5) Trust.

A trust is a legal entity created to transfer property to a trustee to hold and manage for the benefit and profit of designated persons. The trust is the employing unit. A trust instrument or document must exist in order for the entity to be recognized. If the trustee does not independently perform fiduciary and management responsibilities, the trustee is an employee of the trust.

(6) Association.

An association is an entity consisting of a collection or organization of persons or other legal entities that have joined together for a certain common objective. Payments to association members for business services such as accounting and maintenance are considered wages unless the member is exempt as an independent contractor as defined in Section R994-204-301, Independent Contractor. Documented expense reimbursements paid to members are not wages.

(7) Joint Venture.

A joint venture is a legal entity consisting of a one-time grouping of two or more persons or legal entities in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties. The exempt or employment status of proprietors, partners, LLC members, or corporate officers is not lost in the formation of the joint venture.

(8) Estate.

An estate is a legal entity consisting of the property of a living, deceased, or bankrupt person. An estate established to manage a person's business is the employing unit. The executor or administrator of the estate is not considered to be an employee of the estate.

R994-202-102. Temporary Help Company.

(1) "Temporary help services" means services consisting of an organization:

(a) recruiting and hiring its own employees;

(b) finding other organizations that need the services of those employees;

(c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces;

(d) providing assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects with a definite ending date; and

(e) customarily attempting to reassign the employees to other organizations when they finish each assignment by a definite ending date.

(2) A company that provides all or substantially all of the client company's regular workers with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company is considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is licensed as a Professional Employer Organization (PEO) pursuant to the provisions of Section 31A-40-101 et seq.

(3) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of the temporary help services company or the services are rendered by an employee of the temporary help services company.

R994-202-103. Common Paymaster.

(1) A common paymaster relationship exists when two or more related corporations concurrently employ the same individual and one of the corporations compensates the individual for the concurrent employment. The Internal Revenue Service will recognize a common paymaster if the closely related corporations satisfy all of the following criteria:

(a) each related company is a corporation;

(b) there must be at least 50 percent common ownership of stock or interest, or there must be at least 50 percent common officers in the related companies, or 30 percent of the employees work for all of the related companies;

(c) the reporting for any calendar year must be consistent with FUTA annual 940 reporting; and

(d) the employee(s) must be performing concurrent service for some or all of the related companies.

(2) The Department does not allow or recognize common paymaster reporting as of March 1, 2005, even if the relationship is approved by the Internal Revenue Service. Each corporation is required to register with the Department and obtain a Utah Employer Registration Number.

R994-202-104. Payrolling.

(1) Payrolling is defined as the practice of an employing unit paying wages to the employees of another employer or reporting those wages on its payroll tax reports. Generally an employee is reportable by the employer:

(a) who has the right to hire and fire the employee;

(b) who has the responsibility to control and direct the employee; and

(c) for whom the employee performs the service.

(2) Payrolling is not allowed. Exceptions to this provision are contained in the Professional Employer rule R994-202-106 and the Temporary Help Services rule R994-202-102.

R994-202-105. Constructive Knowledge of Work Performed.

(1) If an individual is hired to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by that employee.

(2) The employer must report and pay contributions for all actual and constructive employment.

(3) An employer has actual or constructive knowledge if:

(a) The employer knows or should have known the employee hires an assistant;

(b) The employer knows or should have known that the employee's duties require an assistant;

(c) The employer instructs the employee to perform duties without an assistant, but the employee disregards the instructions and hires an assistant. If the employer becomes aware of the situation and takes no action to discontinue the current or future working relationship between the employee and the assistant, the assistant is considered to be employed by the employer for both the past and future work performed. However, if the employer takes action to prevent the employee from hiring an assistant in the future, then the assistant is not considered employed by the employer for the work already performed; or

(d) The employer gives the employee the option of hiring an assistant. The employee hires an assistant but does not inform the employer of the hire.

R994-202-106. Professional Employer Organizations (PEO).

(1) Definitions.

(a) "Agent" means an individual or organization authorized to act on behalf of an employer.

(b) "Client" or "client company" means a person or entity that enters into a professional employer agreement with a PEO.

(c) "Co-employment relationship" means a relationship that is intended to be ongoing rather than temporary or project specific and whose rights, obligations and responsibilities of an employer are allocated pursuant to the professional employer agreement or Chapter 40 of the PEO Licensing Act.

(d) "Professional employer agreement" means a written contract by and between a client and a PEO that provides for the co-employment of a covered employee as defined in Section 31A-40-102.

(e) "Professional employer organization" or "PEO" means any organization engaged in the business of providing professional employer services. "Employee leasing company" and "Employee staffing company" are terms also used to describe a PEO.

(f) "Professional employer services" means the service of entering into a co-employment relationship under which all or a majority of the employees who provide a service to a client, or division or work unit of a client, are considered employees as defined in the PEO Licensing Act, Section 31A-40-101 et seq.

(g) "Covered employee" means an individual is a covered employee of a PEO if the individual is co-employed pursuant to a professional employer agreement subject to Section 31A-40-203.

(2) Before the employer is considered to be a PEO, it must comply with the requirements of the PEO Licensing Act, Sections 31A-40-101 through 31A-40-402 of the Utah Code. In the absence of such compliance, the Department may choose to hold each "client company" as the employing unit.

(3) A PEO that fails to qualify as an employer under Sections 31A-40-101 through 31A-40-402 of the PEO Licensing Act and as an employing unit under 35A-4-202(1), is

considered to be the agent of the client company. The client's workers are not the employees of the agent. The client company remains the employer of its workers for all purposes of the Employment Security Act. An employee not covered by a professional employment agreement remains the employee of the client company.

(4) Individuals and services exempt under the Employment Security Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of a PEO or the services are rendered by an employee of a PEO. The exemptions for domestic and agricultural services contained in Section 35A-4-205 are taken into consideration for the PEO's clients in the aggregate, and not on an individual client basis.

(5) A PEO cannot elect reimbursable coverage even if the client company could independently qualify as a reimbursable employer.

(6) Reporting Requirements.

(a) Any entity conducting business as a PEO must register with the Department and complete all forms and reports required by the Department. Failure to file reports or pay contributions timely will result in the Department treating the client as a new employer without experience rating, unless the client is otherwise eligible for experience rating, beginning on the day the PEO failure occurred, as outlined in Section 31A-40-210 of the PEO Licensing Act:

(b) Within 30 days of the effective date of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of the contract;

(ii) the client's name and address;

(iii) the client's Federal Employer Identification Number (FEIN) if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department; and

(iv) the client's principal business activity.

(c) Within 30 days of the termination of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of contract termination;

(ii) the client's name and address; and

(iii) the client's FEIN if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department.

(7) The Department may directly contact a PEO or its clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.

(8) The rules pertaining to "payrolling" in R994-202-104 do not apply to a PEO that is in compliance with the PEO Licensing Act, Sections 31A-40-101 through 31A-40-402.

KEY: unemployment compensation, employment
June 18, 2009 35A-4-202(1)
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R994. Workforce Services, Unemployment Insurance.
R994-208. Wages.
R994-208-101. Definition of Wages.

Section 35A-4-208 defines "wages".

(1) Wages means all payments for employment including the cash value of all payments in any medium other than cash, except payments excluded under Subsection 35A-4-208(5) and Section R994-208-103. Wages are subject to the Act only if they are for services that are employment as defined in Section 35A-4-204.

(2) Wages are reportable by the employer in the quarter actually paid or constructively paid. Wages are constructively paid, as defined in 26 CFR 31.3301-4. Wages are constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time without any substantial limitation or restriction as to the time, manner, or condition upon which the payment is to be made. The payment must also be within the worker's control and disposition.

(3) Wages subject to the Act are taxable only to the extent of the yearly taxable wage base. Wages in excess of the taxable wage base are reportable but not taxable. The taxable wage base applies to wages paid to each worker in any calendar year and is established pursuant to Subsection 35A-4-208(2). The employer must report all wages subject to the Act and pay contributions on the taxable wages as specified in the contribution payment due date Section R994-302-102.

R994-208-102. Wages Include.

Wages include the following:

(1) Payments for Personal Services.

All payments by the hour, by the job, piece rate, salary, or commission are wages.

(2) Meals, Lodging and Other Payments in Kind.

Meals, lodging and payments in kind that are furnished to promote good will, to attract prospective workers, or as part of payment for services are wages except as noted in Section R994-208-103. The value of these payments in kind shall be determined as follows:

(a) If a cash value for payments in kind is agreed upon in any contract, the amount agreed upon shall be deemed to be the value of such payments in kind provided such value equals or exceeds the cash value prevailing under similar conditions in the locality.

(b) If a cash value for payments in kind is not agreed upon, the Department will determine the value on the basis of the cash value prevailing under similar conditions in the locality.

(3) Tips and Gratuities.

(a) Tips or gratuities accounted for by the worker to the employer are wages whether paid directly to the worker by the customer or by the employer.

(b) If a worker's only payment for services is tips or tips are used to supplement the worker's regular wages in order to meet the applicable federal or state minimum wage laws, the Department will determine the worker's wages. However, such wages will not be less than the applicable federal or state minimum wage.

(c) Wages also include any allocated tips calculated by the employer.

(4) Payment for Services of Worker with Equipment.

When a worker is hired with equipment, the fair value of the payment for the worker's services, as distinguished from an allowance for use of equipment, if specified in the contract of hire, will be considered "wages". The Department will determine the worker's wages based on the prevailing wages for similar work under comparable conditions if the contract of hire does not specify the worker's wages, or the value of wages agreed upon in the contract of hire is not a fair value.

(5) Vacation Pay

Vacation payments made by the employer during the employment relationship or upon termination of employment are wages.

(6) Sick Pay.

(a) Sick payments made by the employer during the employment relationship or upon termination of employment are wages.

(b) Sick pay is not wages if paid after the end of six calendar months following the calendar month the employee last worked for the employer.

(c) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of the sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party is liable for the unemployment contributions due on these payments. These provisions regarding sick pay are established to comply with the Federal Unemployment Tax Act (FUTA) provisions. For reference, see Internal Revenue Code Section 3306(b).

(7) Bonuses and Gifts.

(a) Bonuses and gifts to employees are wages unless the value is so small that it would be unreasonable for the employer to account for it. The value of benefits such as store discounts, discounts at company cafeterias, and company picnics are not wages.

(b) The value of gifts such as a turkey, ham, or other item of nominal value at Christmas or other holidays are not wages. However, gifts of cash, gift certificates, or similar items that can easily be exchanged for cash, are wages.

(8) Stock Payments.

Payments of stock for services performed are wages. The value of the stock is its cash value at the time of transfer to the employee.

(9) Stock options included as wages.

There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options. There are wage implications only with respect to non-qualified stock options.

(a) Non-qualified stock options are defined by the Internal Revenue Service as those that do not meet all of the requirements of the Internal Revenue Code to qualify as incentive stock options or employee stock purchase plan options.

(b) A worker may receive an option as payment for services. The granting of the option is not wages.

(c) A worker exercises an option when the worker takes an action to buy the stock.

(d) The difference between the exercise price, the value of stock at the time the option is issued, and the fair market value of the stock at the time of exercise is called the spread. The amount of a positive spread at the time the option is exercised is wages.

(10) Contributions to Deferred Compensation Plans.

Contributions by either the employer or the worker to deferred compensation plans including 401(k) plans are wages. For reference, see Section 3306(r) of the Internal Revenue Code.

(11) Residual Payments.

Performers in the television, radio and motion picture industry may receive additional payments, termed "residuals" by the industry as a result of the re-use of a recording or the re-showing of a film or taped television production. Residuals are deferred compensation and are wages if the performer, at the time of the original performance, was an employee.

(a) Residual payments are reportable by the employer in the quarter they are paid.

(b) Residual payments are reportable by the claimant only for the weeks in which the service was originally performed.

(c) Since residual payments are reportable as wages by the employer and the claimant, they can be used for the purpose of establishing a monetary base for future unemployment benefits. These wages can be used to purge a disqualification made under the Utah Employment Security Act only if the original work was performed subsequent to the disqualification.

R994-208-103. Wages Do Not Include.

Wages do not include any of the following:

(1) Meals and Lodging Furnished for Employer's Convenience.

Meals and Lodging provided by an employer to a worker shall not be considered wages if excluded from the definition of wages by the Internal Revenue Service under the following conditions:

(a) they are provided at the employer's place of business; and

(b) in the case of lodging, the worker must accept the lodging as a condition of employment; and

(c) they are provided for the employer's convenience. Meals and lodging will be considered to be for the convenience of the employer if there is a good business reason for providing them including:

(i) To have workers available at all times or for emergency calls.

(ii) Workers have a short meal period.

(iii) Adequate eating and lodging facilities are not otherwise available.

(2) Expense Reimbursement.

Expense reimbursements are excluded from the definition of wages based upon the existence of an accountable plan as defined in Section 62 of the Internal Revenue Code.

(a) An accountable plan is any reimbursement or other expense allowance arrangement, including per diem allowances providing for ordinary and necessary expenses of traveling away from home, that meets all of the following requirements:

(i) There is a business connection. The expenses are paid or incurred by the worker in connection with the performance of services as an employee of the employer;

(ii) Information sufficient to substantiate the amount, time, and business purpose of the expenses must be submitted to the employer; and

(iii) Excess reimbursement amounts, as a result of advances, are returned to the employer.

(b) A nonaccountable plan is any plan that fails to meet any one or more of the requirements of an accountable plan. Reimbursements in a nonaccountable plan are wages.

(3) Insurance Premiums Paid by the Employer.

Insurance premiums for health or life insurance paid by the employer for workers generally or a class of workers are not wages under Subsection 35A-4-208(5)(a).

(4) Sick Pay Excluded as Wages.

The following provisions regarding sick pay are established to comply with the FUTA provisions contained in Section 3306(b)of the Internal Revenue Code.

(a) Sick pay is not wages if paid after the end of six months following the calendar month the worker last worked for the employer.

(b) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of such sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party will be liable for the unemployment contributions due on these payments.

(c) Payments made to a worker that are received under a workers' compensation law are not wages.

(5) The Employer's Share of the Social Security Tax and Medicare Tax.

(6) Retirement Plan Payments Made by the Employer.

Payments made by the employer to retirement plans described in Section 3306(b)(5) of the Internal Revenue Code are not wages.

(7) Training Allowances.

Employment-related training allowances such as payments for expenses necessary for school including tuition, fees, books and travel expenses are not wages. However, payments for services performed as part of the training, such as on-the-job training, are wages.

(8) Corporate Payments Not Considered Wages.

(a) The following payments are not considered wages:

(i) Directors fees paid to directors of a corporation for attending Board of Directors' meetings, reviewing and studying reports, and establishing general company policies. Director services do not include managerial services or other services that are part of the routine activities of a corporation;

(ii) Distributions made to shareholders based on stock ownership;

(iii) Reimbursement for expenses that are reasonable and documented;

(iv) Loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; and

(v) Documented returns of investment where the officer has loaned or invested money in the corporation.

(b) If the amount of compensation, if any, paid to a corporate officer is inadequate given the nature, duration, frequency or significance of the service performed by that officer, other payments made to the officer may be reclassified as wages if there is a lack of documentation or insufficient document to support those other payments. This applies to all corporations regardless of income tax reporting status.

(9) Finder or Referral Fees.

A fee paid to an individual for the referral of a potential customer, provided that the transaction is in the nature of a single or infrequent occurrence and does not involve a continuing relationship with the person paying the fee, is not wages.

(10) Payments to Sole Proprietors.

Payments to sole proprietors, whether draws or payment for services, are not wages. The sole proprietor is the employing unit rather than an employee.

(11) Payments to Partners.

Payments to partners, including draws and payment for services, are not wages. The partners are the employing unit rather than employees. However, payments to limited partners are wages because they do not have the same rights and responsibilities as general partners.

(l2) Supplemental Unemployment Benefits (SUB).

Supplemental Unemployment Benefits are not wages if they meet the requirements specified in Revenue Rulings 56-249, 58-128 and 60-330. Because of the complexity of the factors involved, employers should request a declaratory ruling from the Department on their specific SUB plan. The factors required are as follows:

(a) the benefits are paid only to unemployed former employees of the employer who is providing the SUB Plan;

(b) eligibility for benefits depends on the meeting of prescribed conditions subsequent to the termination of the employment relationship with the employer;

(c) eligibility for benefits is contingent upon the former employee's maintaining eligibility for state unemployment insurance benefits;

(d) the benefits ultimately paid are not attributable to the performance of any service by the recipient for the employer during the period of unemployment;

(e) no employee has any vested right, title, or interest in or to the funds from which the SUB benefits will be paid; and

(f) the funds for the payment of SUB benefits is either established as an independent trust fund administered by trustees, or as a separate account on the employer's general accounting records.

(13) Stock Options Excluded From Wages.

(a) There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options.

(b) Incentive Stock Options and Employee Stock Purchase Plan Options are defined by the Internal Revenue Code.

(c) Payments resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option are not wages.

(14) Stipends.

Stipend payments are not wages. Stipends are payments in lieu of actual expense reimbursements that help cover the costs of expenses such as transportation, meals, and supplies associated with training, schooling, meetings, and volunteer activities.

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R994. Workforce Services, Unemployment Insurance.
R994-406. Fraud, Fault and Nonfault Overpayments.
R994-406-101. Claimant Responsible for Providing Complete, Correct Information.

(1) The claimant is responsible for providing all of the information requested in written documents as well as any verbal request from a Department representative. The claimant is also responsible for following all Department instructions.

(2) The claimant can not shift responsibility for providing correct information to another person such as a spouse, parent, or friend. The claimant is responsible for all information required on his or her claim.

R994-406-201. Nonfault Overpayments.

(1) If the claimant followed all instructions and provided complete and correct information as required in R994-406-101(1) and then received benefits to which he or she was not entitled due to an error made by the Department or an employer, the claimant is not at fault in the creation of the overpayment.

(2) The claimant is not liable to repay overpayments created through no fault of the claimant except that the sum will be deducted from any future benefits.

R994-406-202. Method of Repayment of Nonfault Overpayments.

Even though the claimant is without fault in the creation of the overpayment, 50% of the claimant's weekly benefit amount will be deducted from any future benefits payable to him or her until the overpayment is repaid. No billings will be made and no collection procedures will be initiated.

R994-406-203. Waiver of Recovery of Nonfault Overpayments.

(1) The Department may waive recovery of a nonfault overpayment if the claimant:

(a) is currently eligible to receive unemployment benefits from the state of Utah and has filed a weekly claim against Utah within the last 27 days,

(b) requests a waiver within 10 days of notification of the opportunity to request a waiver, within 10 days of the first offset of benefits following a reopening, or upon a showing of a significant change in the claimant's financial circumstances. Good cause will be considered if the claimant can show the failure to request a waiver within these time limitations was due to circumstances which were beyond the claimant's control or were compelling and reasonable; and

(c) can show that recovery of the 50% offset as provided in R994-406-202 would render the claimant unable to pay for the basic needs of survival for his or her immediate family, dependents and other household members.

(i) The claimant must provide verification of financial resources and the social security numbers of family members, dependents and household members.

(ii) Before granting the waiver, the Department must consider all potential financial resources of the claimant, the claimant's family, dependents and other household members.

(iii) "Unable to pay for the basic needs of survival" means "economically disadvantaged" and is defined as 70% of the Lower Living Standard Income Level (LLSIL). Therefore, if the claimant's total family resources in relation to family size are not in excess of 70% of the LLSIL, the waiver will be granted provided the economic circumstances are not expected to change within the next 90 days. Individual expenses will not be considered. Available financial resources, current income, and anticipated income will be included and averaged for the three months.

(2) Any nonfault overpayment outstanding at the time the request is granted is forgiven and the claimant has no further repayment obligation.

(3) A waiver cannot be granted retroactively for any payments made against an overpayment or any of the overpayment which has already been offset except if the offset was made pending a decision on a timely waiver request which is ultimately granted.

(4) A claimant with an outstanding nonfault overpayment can also apply for an offer in compromise as provided in R944-305-1201.

R994-406-301. Claimant Fault.

(1) Elements of Fault.

Fault is established if all three of the following elements are present, or as provided in subsection (3) and (4) of this section. If one or more elements cannot be established, the overpayment does not fall under the provisions of Subsection 35A-4-405(5).

(a) Materiality.

Benefits were paid to which the claimant was not entitled.

(b) Control.

Benefits were paid based on incorrect information or an absence of information which the claimant reasonably could have provided.

(c) Knowledge.

The claimant had sufficient notice that the information might be reportable.

(2) Claimant Responsibility.

The claimant is responsible for providing all of the information requested by the Department regarding his or her Unemployment Insurance claim. If the claimant has any questions about his or her eligibility for unemployment benefits, or the Department's instructions, the claimant must ask the Department for clarification before certifying to eligibility. If the claimant fails to obtain clarification, he or she will be at fault in any resulting overpayment.

(3) Receipt of Settlement or Back-Pay.

(a) A claimant is "at fault" for the resulting overpayment if he or she fails to advise the Department that grievance procedures are being pursued which may result in payment of wages for weeks during which he or she claims benefits.

(b) If the claimant advises the Department prior to receiving a settlement that he or she has filed a grievance with the employer and makes an assignment directing the employer to pay to the Department that portion of the settlement equivalent to the amount of unemployment compensation received, the claimant will not be "at fault" if an overpayment is created due to payment of wages attributable to weeks for which the claimant received benefits. If the grievance is resolved in favor of the claimant and the employer was properly notified of the wage assignment, the employer is liable to immediately reimburse the Department upon settlement of the grievance. If reimbursement is not made to the Department consistent with the provisions of the assignment, collection procedures will be initiated against the employer.

(c) If the claimant refuses to make an assignment of the wages claimed in a grievance proceeding, benefits will be withheld on the basis that the claimant is not unemployed because of anticipated receipt of wages. In this case, the claimant should file weekly claims and if back wages are not received when the grievance is resolved, benefits will be paid for weeks properly claimed provided the claimant is otherwise eligible.

(4) Receipt of Retirement Income.

Notwithstanding any other provision of this section, a claimant who could be eligible for retirement income but does not apply until after unemployment benefits have been paid, is "at fault" for any overpayment resulting from a retroactive payment of retirement benefits. See R994-401-203(1)(d) and (2)

(5) Correcting Earlier Weekly Claims.

If a claimant reports incorrect information about his or her income or earnings, the claimant must immediately contact the Department to correct the information. A claimant who contacts the Department to correct reported income is considered to be "at fault" and is responsible for repaying any resulting overpayment even if at the time the claimant filed the weekly claim for benefits he or she was unaware of the correct income or earnings. A claimant who fails to contact the Department to correct inaccurately reported earnings may be subject to fraud penalties under subsection R994-406-401.

R994-406-302. Repayment and Collection of Fault Overpayments.

(1) When the claimant has been determined to be "at fault" in the creation of an overpayment, the overpayment must be repaid. If the claimant is otherwise eligible and files for additional benefits during the same or any subsequent benefit year, 100% of the benefit payment to which the claimant is entitled will be used to reduce the overpayment.

(2) Discretion for Repayment.

(a) Full restitution is required for all fault overpayments except as provided in R994-305-1201. However, legal collection proceedings may be held in abeyance at the Department's discretion and the overpayment will be deducted from future benefits payable during the current or subsequent benefit years. Discretion will only be exercised if the Department or the employer share fault in the creation of the overpayment but it is determined the claimant was more at fault under the provisions of rule R994-403-119e.

(3) Collection Procedures.

(a) The Department will send an initial overpayment notice on all outstanding fault or fraud overpayments. If, after 15 days, the claimant does not either make payment in full or enter into an installment payment agreement as provided in subsection (4) below the account is considered delinquent and the claimant is notified that a warrant will be filed unless a payment is received or an installment agreement entered into within 15 days. However, there may be other circumstances under which a warrant may be filed on any outstanding overpayment. A warrant attaches a lien to any personal or real property and establishes a judgment that is collectible under Utah Rules of Civil Procedure.

(b) All outstanding overpayments on which a lien has been filed are reported to the State Division of Finance for collection whereby any refunds due to the claimant from State income tax or any such rebates, refunds, or other amounts owed by the state and subject to legal attachment may be applied against the overpayment.

(c) All overpayments that are past due, legally enforceable, and attributable to fraud or the claimant's failure to report earnings shall be submitted to the Treasury Offset Program whereby the Secretary of the Treasury can offset Federal tax refund payments to be applied against the approved overpayment. Only overpayments where a valid warrant has been filed for failure to repay, that lack an installment agreement or are not current on approved installment agreement payments will be subject to the Treasury Offset Program.

(d) No warrant will be issued on fault overpayments provided the claimant entered into an installment agreement within 30 days of the issuance of the initial overpayment notice and all payments are made in a timely manner in accordance with the installment agreement.

(4) Installment Payments.

(a) If repayment in full has not been made within 30 days of the initial overpayment notice or the claimant has not voluntarily entered into an installment agreement or offer in compromise as provided in R994-305-1201, the Department will allow the claimant to pay in installments by notifying the claimant in writing of the minimum installment payment which the claimant is required to make. If the claimant is unable to make the minimum installment payments, the claimant may request a review within ten days of the date written notice is mailed.

(b) Whether voluntarily or involuntary, installment payments will be established as follows:

If the entire overpayment is:

(i) $3,000 or less, the monthly installment payment is equal to 50% of claimant's weekly benefit entitlement

(ii) $3,001 to 5,000, the monthly installment payment is equal to 100% of claimant's weekly benefit entitlement

(iii) $5,001 to 10,000 the monthly installment payment is equal to 125% of claimant's weekly benefit entitlement

(iv) $10,001 or more the monthly installment payment is equal to 150% of claimant's weekly benefit entitlement

(c) Installment agreements will not be approved in amounts less than those established above except in cases where the claimant meets the requirements of economically disadvantaged as defined in R994-406-203(1)(b)(iii). On a periodic basis the Department may send notice to the claimant requesting verification of his or her disadvantaged status. If the claimant fails to provide the verification as requested, or no longer qualifies for a lesser installment payment, the Department will send the claimant a new monthly payment amount. The new installment payment amount may be in accordance with the percentages in subparagraph (b) or a lesser amount depending on the information received from the claimant.

(d) Minimum monthly installment agreement payments must be received by the Department by the last day of each month. Payments not made timely are considered delinquent.

(5) Offsetting overpayments with subsequent eligible weeks.

If an overpayment is set up under Section R994-406-201 or R994-406-301 for weeks paid on a claim, the claimant may repay the overpayment by filing for open weeks in the same benefit year after the claim has been exhausted, provided the claimant is otherwise eligible. 100% of the compensation amount for each eligible week claimed will be credited to the established overpayment(s) up to the total amount of the outstanding overpayment balance owed to the Department.

R994-406-401. Claimant Fraud.

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining;

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card (card) issued by the Department. Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

(4) A claimant is required, under R994-403-114c, to immediately notify the Department if the claimant is incarcerated. Upon notification, the Department will stop all unemployment benefits to the claimant until the claimant notifies the Department of his or her release from incarceration. If a claimant fails to notify the Department of his or her incarceration, any claims made during the incarceration period will be considered fraudulent.

R994-406-402. Burden and Standard of Proof in Fraud Cases.

(1) The Department has the burden of proving each element of fraud.

(2) The elements of fraud must be established by clear and convincing evidence. There does not have to be an admission or direct proof of intent.

R994-406-403. Fraud Disqualification and Penalty.

(1) Penalty Cannot be Modified.

The Department has no authority to reduce or otherwise modify the period of disqualification or the monetary penalties imposed by statute. The Department cannot exercise repayment discretion for fraud overpayments and these amounts are subject to all collection procedures.

(2) Week of Fraud.

(a) A "week of fraud" shall include each week any benefits were received due to fraud. The only exception to this is if the fraud occurred during the waiting week causing the next eligible week to become the new waiting week. In that case, the new waiting week will not be considered as a week of fraud for disqualification purposes. However, because the new waiting week is a non-payable week, any benefits received during that week will be assessed as an overpayment and because the overpayment was as a result of fraud, a fraud penalty will also be assessed.

(b) If a claimant commits a fraudulent act during one week, and benefits are paid in later weeks which would not have been paid but for the original fraud, each week wherein benefits were paid is a week of fraud subject to an overpayment determination, a penalty and a disqualification period.

(c) If the only week of fraud was the waiting week and no benefit payments were made, there will be no disqualification period.

(3) Disqualification Period.

(a) The claimant is ineligible for benefits for a period of 13 weeks for the first week of fraud. For each additional week of fraud, the claimant will be ineligible for benefits for an additional six weeks. The total number of weeks of disqualification will not exceed 49 weeks for each fraud determination. The Department will issue a fraud determination on all weeks of fraud the Department knows about at the time of the determination.

(b) The disqualification period begins the Sunday following the date the Department fraud determination is made.

(4) Overpayment and Penalty.

(a) For any fraud decision where the initial fraud determination was issued on or before June 30, 2004, the claimant shall repay to the division an overpayment which is equal to the amount of the benefits actually received. In addition, a claimant shall be required to repay, as a civil penalty, the amount of benefits received as a direct result of fraud. "Benefits actually received" means the benefits paid or constructively paid by the Department. Constructively paid refers to benefits used to reduce or off-set an overpayment, deducted at the request of the claimant to pay income taxes, or used as a payment to the Office of Recovery Services for child support obligations or other payments as required by law. For example: The claimant has a weekly benefit amount of $100 and reports no earnings during a week when he or she actually had $50 in reportable earnings. Because a claimant may earn up to 30% of his or her weekly benefit amount with no deduction, the claimant was entitled to receive $80 for that week and was thus overpaid the amount of $20. If the elements of fraud are established, the claimant is disqualified during that week of fraud and all benefits paid for that week are considered an overpayment. The claimant would also be liable to repay, as a civil penalty, the $20 received by direct reason of fraud. Therefore, in this example, the claimant would be liable for a total overpayment and penalty of $120, an amount that would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(b) For all fraud decisions where the initial department determination is issued on or after July 1, 2004, the claimant shall repay to the division the overpayment and, as a civil penalty, an amount equal to the overpayment. The overpayment in this subparagraph is the amount of benefits the claimant received by direct reason of fraud. In the example in subsection (3)(a) of this section, the overpayment would be $20 and the penalty would be $20 for a total due of $40. The overpayment and penalty would have to be repaid in its entirety before the claimant would be eligible for any further waiting week credit or unemployment benefits. The claimant would also be subject to a 13-week penalty period.

(5) Additional Penalties. Criminal prosecution of fraud may be pursued as provided by Subsection 35A-4-104(1) in addition to the administrative penalties.

R994-406-404. Repayment and Collection of Fraud Overpayments and Penalties.

Fraud overpayments and penalties will be collected in accordance with rule R994-406-302 except that a warrant will always issue in fraud overpayments even if the claimant enters into an installment agreement and is current in the monthly payments. Fraud overpayments and penalties may also be collected by civil action or warrant as provided by Subsections 35A-4-305(3) and 35A-4-305(5), respectively. The Department may use unemployment insurance benefits payable for weeks

prior to the penalty period to reduce overpayments and penalties.

R994-406-405. Future Eligibility in Fraud Cases.

A claimant is ineligible for unemployment benefits or waiting week credit after a disqualification for fraud until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full. Wage credits earned by the claimant cannot be used to pay benefits or transferred to another state until the overpayment and penalty are satisfied. An outstanding overpayment or penalty may NOT be satisfied by deductions from benefit payments for weeks claimed after the disqualification period ends, as a claimant is precluded from receiving any future benefits or waiting week credit as long as there is an outstanding fraud overpayment. However, a claimant may be permitted to file a new claim to preserve a particular benefit year. An overpayment is considered satisfied as of the beginning of the week during which payment is received by the Department. Benefits will be allowed as of the effective date of the new claim if a claimant repays the overpayment and penalty within seven days of the date the notice of the outstanding overpayment and penalty is mailed.

R994-406-406. Agency Error in Determining Disqualification Periods.

If the division has sufficient evidence to assess a disqualification prior to paying benefits, but fails to take action, a fraud disqualification will not be assessed even if the claimant provided false or information or deliberate omissions. The resulting overpayment will be assessed under the provisions of Subsections 35A-4-406(4)(b) or 35A-4-406(5)(a).

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