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 governing meeting per diem and travel expenses for board members attending official meetings.

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) "Home-Base" means the location the employee leaves from and/or returns to.

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

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

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

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

(10) "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 $41.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$17.00
Total	$41.00

(b) The daily travel meal allowance for out-of-state travel is $46.00 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	$22.00
Total	$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), 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 $66 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), 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 $57 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 premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct $15, leaving a premium allowance for lunch and dinner of actual up to $51.

(ii) If lunch is provided deduct $20, leaving a premium allowance for breakfast and dinner of actual up to $46.

(iii) If dinner is provided deduct $31, leaving a premium allowance for breakfast and lunch of actual up to $35.

Tier II Location

(i) If breakfast is provided deduct $13, leaving a premium allowance for lunch and dinner of actual up to $44.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $40.

(iii) If dinner is provided deduct $27, leaving a premium allowance for breakfast and lunch of actual up to $30.

(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 the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(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 a.m. 12:00-5:59	2nd Quarter a.m. 6:00-11:59	3rd Quarter p.m. 12:00-5:59	4th Quarter p.m. 6:00-11:59
*B, L, D	*L, D	*D	*no meals
In-State			
$41.00	$31.00	$17.00	$0
Out-of-State			
$46.00	$36.00	$22.00	$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. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(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 a.m. 12:00-5:59	2nd Quarter a.m. 6:00-11:59	3rd Quarter p.m. 12:00-5:59	4th Quarter p.m. 6:00-11:59
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$10.00	$24.00	$41.00
Out-of-State			
$0	$10.00	$24.00	$46.00

*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 at 6 p.m. or later.

(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. Meals 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 and any mandatory fees charged by the hotel 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 $70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates	
Beaver	$75.00 plus tax and mandatory fees
Blanding	$75.00 plus tax and mandatory fees
Bluff	$90.00 plus tax and mandatory fees
Brigham City	$80.00 plus tax and mandatory fees
Bryce Canyon City	$75.00 plus tax and mandatory fees
Cedar City	$80.00 plus tax and mandatory fees
Duchesne	$80.00 plus tax and mandatory fees
Ephraim	$75.00 plus tax and mandatory fees
Farmington	$85.00 plus tax and mandatory fees
Fillmore	$75.00 plus tax and mandatory fees
Garden City	$80.00 plus tax and mandatory fees
Green River	$85.00 plus tax and mandatory fees
Heber	$85.00 plus tax and mandatory fees
Kanab	$85.00 plus tax and mandatory fees
Layton	$85.00 plus tax and mandatory fees
Logan	$85.00 plus tax and mandatory fees
Moab	$100.00 plus tax and mandatory fees
Monticello	$80.00 plus tax and mandatory fees
Ogden	$85.00 plus tax and mandatory fees
Park City/Midway	$100.00 plus tax and mandatory fees
Price	$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	$85.00 plus tax and mandatory fees
Roosevelt/Ballard	$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area	

(Draper to Centerville), Tooele	$100.00 plus tax and mandatory fees
St.George/Washington/Springdale/ Hurricane	$85.00 plus tax and mandatory fees
Torrey	$85.00 plus tax and mandatory fees
Tremonton	$90.00 plus tax and mandatory fees
Vernal	$95.00 plus tax and mandatory fees
All Other Utah Cities	$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(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 and any mandatory fees charged by the hotel, 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 and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(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 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, transportation costs, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5.00 per day.

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

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $19.99.

(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) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.

(3) Registration should be paid in advance on a state warrant, with a state purchase card, or with a state travel card.

(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.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to $2.50 per night.

(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. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(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.

(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 long term parking rate at the airport they are flying out of.

(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 54 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 54 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) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(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) A comparison 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 54 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

August 22, 2016 63A-3-107

Notice of Continuation April 15, 2013 63A-3-106

R33. Administrative Services, Purchasing and General Services.
R33-1. Utah Procurement Rules, General Procurement Provisions.
R33-1-1. Definitions.

(A) Terms used in the procurement rules are defined in Sections 63G-6a-103 and 104.

(B) In addition:

(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) "Adequate Price" Competition means:

(a) when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.

(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(5) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

(6) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

(7) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(8) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

(9) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

(10) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(11) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(12) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

(13) "Include, Includes, or Including" has the same meaning as Section 68-3-12(1)(f). When used in code or rule, "include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

(14) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

(15) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the procurement unit.

(16) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(17) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(18) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(19) "Person" means:

(a) an individual;
(b) an association;
(c) an institution;
(d) a corporation;
(e) a company;
(f) a trust;
(g) a limited liability company;
(h) a partnership;
(i) any other organization or entity.

(20) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(21) "Price Data" means factual information concerning prices for procurement items.

(22) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.

(23) "Section and Subsection" refers to, as applicable, the Utah Code and the Administrative Rule.

(24) "Service" means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a:

(a) Professional service;
(b) Management and operation service;
(c) Consulting service;
(d) Advertising or promotional service;
(e) Concession service;
(f) Vending service;
(g) Management and operation service;
(h) Promotional service;
(i) Banking service;
(j) Credit card service;
(k) Electronic benefit transfer (EBT) card service; or
(l) Women, infants, and children (WIC) card service.

(25) "Surety bond" (performance bond) means a promise to pay one the oblige (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the oblige (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the oblige (owner), will recover its losses via the bond.

(26) "Steering a Contract to a Favored Vendor" is defined as a person involved in the procurement process, including any phase of the procurement process, who inappropriately acts with bias or prejudice in violation of the law to favor one vendor over another vendor(s) in awarding a government contract.

(a) Steering a contract to a favored vendor includes:
(i) Taking part in collusion or manipulation of the procurement process;
(ii) Accepting any form of illegal gratuity, bribe or kickback paid by a vendor in exchange for a contract award;
(iii) Awarding a contract without engaging in a standard procurement process to a vendor without proper justification;
(iv) Involvement in a bid rigging scheme;
(v) Writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or in a way that gives an unfair advantage to a particular vendor without proper justification;
(vi) Intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Section 63G-6a-506(8);
(vii) Leaking bid, proposal, or other information to a particular vendor that is prejudicial to other vendors;
(viii) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension; or
(ix) Participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.
(27) "Technology" means any type of technology defined in Section 63F-1-102(8).

R33-1-2. Applicability of Rules.
(1) Title R33 shall apply to:
(a) A procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103(3) as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Section 63G-6a-103(3); and
(b) A procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103(3) as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or, to the extent, a portion of Title R33 by rule, ordinance, policy, or other authorized means.

R33-1-3. Determinations by Chief Procurement Officer or Head of a Procurement Unit with Independent Procurement Authority.
(1) Unless specifically stated otherwise, all determinations under Utah Procurement Code and Title R33 shall be made by the chief procurement officer or head of a procurement unit with independent procurement authority.
(2) Determinations by the chief procurement officer or head of a procurement unit with independent procurement authority shall be made:
(a) In accordance with the provisions set forth in Sections 63G-6a-106 and 303 and other rules and laws if applicable; or
(b) By applying the reasonable person standard to determine:
(i) If the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of the Utah Procurement Code or Title R33;
(ii) If the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of the Utah Procurement Code or Title R33 has occurred; or
(iii) If the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

R33-1-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.
(1) Unless the chief procurement officer or head of a procurement unit with independent procurement authority issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable Rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process whenever:
(a) Public funds are expended or used to acquire a procurement item; or
(b) A procurement unit's property, name, influence, assets, resources, programs, or other things of value is used as consideration in the formation of a contract for a procurement item.

R33-1-12. Mandatory Minimum Requirements in a Solicitation.
(1) Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified persons responding to a solicitation and to limit the number of persons eligible to move forward to subsequent stages in the solicitation or evaluation process. Examples of mandatory minimum requirements include:
(a) Ability to meet delivery deadlines;
(b) Qualifications;
(c) Certifications;
(d) Licensing;
(e) Experience;
(f) Compliance with State or Federal regulations;
(g) Type of services provided; or
(i) Availability of product, equipment, supplies, or services.

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions
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R33. Administrative Services, Purchasing and General Services.
R33-4. Supplemental Procurement Procedures.
R33-4-101. Request for Statement of Qualifications.
Reserved.

R33-4-101a. Rejection of a Late Solicitation Response -- Delivery and Time Requirements.
(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a response to a request for statement of qualifications after the time for submission of a request for statement of qualifications has expired.
(2) When submitting a response to a request for statement of qualifications electronically, vendors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a vendor is in the middle of uploading a response when the closing time arrives, the procurement unit will stop the process and the response will not be accepted.
(3) When submitting a response to a request for statement of qualification by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) vendors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a response being late.
(a) All responses received by physical delivery will be date and time stamped by the procurement unit.
(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a response not being received by the established due date and time, the response shall be accepted as being on time.

R33-4-101b. Vendors with Exclusive Authorization to Bid.
(1) The requirements of this rule shall only apply when a procurement unit issues a prequalification for potential vendors as set forth in Utah Code 63G-6a-403 for all qualified, responsive and responsible vendors with an exclusive dealership, franchise, distributorship, or other arrangement, from a manufacturer identifying the vendor as the only one authorized to submit bids or quotes for the specified procurement item within the State of Utah or a region within the State of Utah.
(a) Under the provisions of this rule, no vendor described in (1) may be excluded from the list of prequalified vendors, unless a determination is made by the procurement unit that a vendor is not qualified, responsive or responsible.
(b) The request for statements of qualifications shall indicate that all vendors on the prequalified vendor list will be invited to submit bids or quotes.
(2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:
(a) cost;
(b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;
(c) training, knowledge and experience of employees of the procurement unit and of the vendors;
(d) past performance of vendors and pertaining to the procurement item being purchased;
(e) the costs associated with transitioning from an existing procurement item to a new procurement item; or
(f) other factors determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.
(3) Procurement units must follow the requirements in R33-4-110 when obtaining quotes and the requirements in Part 6 of the Utah Procurement Code when obtaining bids.
(4) An exception to the requirements of this rule may be authorized by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-4-103. Specifications.
(1) Public entities shall include in solicitation documents specifications for the procurement item(s).
(2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.
(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.
(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.
(a) Subsection R33-4-104(3) does not apply to the following:
(i) a design build construction project; and
(ii) other procurements determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
(b) Violations of this Subsection R33-4-104(3) may result in:
(i) the bidder or offeror being declared ineligible for award of the contract;
(ii) the solicitation being canceled;
(iii) termination of an awarded contract; or
(iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
(4) Brand Name or Equal Specifications.
(a) Brand name or equal specifications may be used when:
(i) "or equivalent" reference is included in the specification; and,
(ii) as many other brand names as practicable are also included in the specification.
(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.
(5) Brand Name Requirements.
(a) If only one brand can meet the requirements set forth in the specifications, the procurement unit shall solicit from as many providers of the brand as practicable; and
(b) If there is only one provider that can meet the requirements set forth in the specifications, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802 and Section R33-8-101b.

R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.
(1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following

circumstances:

(a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-112 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;

(b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or

(c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.

(i) Reasonable effort shall mean:

(A) Public notice under Utah Code 63G-6a-112;

(B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;

(C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or

(D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.

(2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:

(a) whether pricing is fair and reasonable as set forth in R33-6-109(1);

(b) canceling the procurement as set forth in R33-9-103; and

(c) bid security requirement as set forth in R33-11-202.

(3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

R33-4-110. Use of Electronic, Telephone, or Written Quotes.

(1) Quote means an informal purchasing process which solicits pricing information from several sources.

(2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and

(a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) The procurement unit maintains a public record that includes:

(i) The name of each vendor supplying a quotation; and

(ii) The amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) May obtain electronic, telephone, or written quotations for a procurement item costing less than $5,000;

(b) Shall send a request to obtain quotations for a procurement item costing more than $5,000 to the division of state purchasing;

(i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than $5,000; and

(c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

KEY: government purchasing, general procurement provisions, specifications, small purchases
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R33. Administrative Services, Purchasing and General Services.
R33-5. Other Standard Procurement Processes.
R33-5-101. Request for Information.

In addition to the requirements of Part 5 of the Utah Procurement Code, a Request for Information should indicate the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

R33-5-104. Small Purchases.

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) Small Purchase thresholds:

(a) The "Individual Procurement" threshold is a maximum amount of $1,000 for a procurement item;

(i) For individual procurement item(s) costing up to $1,000, a procurement unit may select the best source by direct award and without seeking competitive bids or quotes.

(b) The single procurement aggregate threshold is a maximum amount of $5,000 for multiple procurement item(s) purchased from one source at one time; and

(c) The annual cumulative threshold from the same source is a maximum amount of $50,000.

(3) Whenever practicable, the Division of Purchasing and General Services and procurement units shall use a rotation system or other system designed to allow for competition when using the small purchases process.

R33-5-105. Small Purchases Threshold for Design Professional Services.

(1) The small purchase threshold for design professional services is a maximum amount of $100,000.

(2) Design professional services may be procured up to a maximum of $100,000, by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.

(3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select design professional firms identified in Subsection (2) from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field; or

(d) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) A procurement unit shall include minimum specifications when using the small purchase threshold for design professional services.

(5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the evaluation and fee negotiation process described in Part 15 of the Utah Procurement Code in the procurement of design professional services.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-106. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold is a maximum of $2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) A procurement unit shall include minimum specifications when using the small purchases threshold for construction projects.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.

(4) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects up to a maximum of $25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that it is capable of meeting the minimum specifications of the project.

(5) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects costing more than $25,000 up to a maximum of $100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(6) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors and contractors identified in Subsections (4) and (5) from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field;

(d) Invite all contractors on the approved vendor list to submit quotes, applicable to Subsection (5) only; or

(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(7) Under this rule, the chief procurement officer or head of a procurement unit with independent procurement authority shall procure small construction projects costing more than $100,000 up to a maximum of $2.5 million through a two-stage process. Stage one, qualify vendors under Section 63G-6a-410 and develop an Approved Vendor List under Section 63G-6a-507. Stage two, issue to all vendors, qualified and approved in stage one, an invitation for bids or request for proposals and use the procedures set forth therein to award a contract.

(8) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and

Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-107. Quotes for Small Purchases from $1,001 to $50,000.

(1) For procurement item(s) where the cost is greater than $1,000 but up to a maximum of $5,000, a procurement unit shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than $5,000 up to a maximum of $50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over $50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing more than $5,000 up to a maximum of $50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

(5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

(7) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field;

(d) Invite all vendors on the approved vendor list to submit quotes; or

(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

R33-5-108. Small Purchases of Professional Service Providers and Consultants.

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of $100,000.

(2) After reviewing the qualifications of a minimum of two professional service providers or consultants, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may obtain professional services or consulting services:

(a) up to a maximum of $50,000 by direct negotiation; or

(b) over $50,000 up to a maximum of $100,000 by obtaining a minimum of two quotes.

(3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select contractors from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field;

(d) Invite all vendors on the approved vendor list to submit quotes; or

(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing at the beginning of the quote or solicitation process, in the procurement of professional services or consulting services.

(5) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;

(f) R33-4-103(3) -- Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications; and

(g) All other applicable laws and rules.

R33-5-201. Approved Vendor List.

In accordance with the provisions set forth in Section 63G-6a-507, a procurement unit may establish an approved vendor list and award contracts using the following methods and all associated laws and rules:

(a) Section 63G-6a-113 and 507(6)(b), Contract Award Based on Established Terms;

(b) Section 63G-6a-609, Multiple Stage Bidding Process;

(c) Section 63G-6a-710, Multiple Stage RFP Process;

(d) Section 63G-6a, Part 15, Design Professional Services; or

(e) Section 63G-6a-506, Small Purchases.

R33-5-202. Contract Award Based on Established Terms.

(1) In accordance with Section 63G-6a-113 and 507(6)(b), a procurement unit may award a contract to a vendor on an

approved vendor list at an established price based on:

(a) A price list, rate schedule, or pricing catalog:

(i) Submitted by a vendor and accepted by the procurement unit; or

(ii) Mandated by the procurement unit or a federal agency; or

(b) A federal regulation for a health and human services program.

(2) Established terms submitted by vendors on an approved vendor list:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog submitted by the vendor, the procurement unit shall, as applicable:

(i) Assign work or purchase from the approved vendor with the lowest price, rate or catalog price;

(A) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-6-111 to resolve tie; and

(B) If the lowest-cost approved vendor cannot provide the procurement item or quantity needed, then work shall be assigned or the purchase made from the next lowest-cost vendor, and so on, until the procurement unit's needs are met;

(ii) Establish a cost threshold based on cost analysis as set forth in Section R33-12-603 and 604, and assign work or purchase from an approved vendor meeting the cost threshold using one of the following methods:

(A) A rotation system, organized alphabetically, numerically, or randomly;

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority; and

(iii) In accordance with Section 63G-6a-1206.5, an approved vendor may lower its price, rate, or catalog price at any time during the time a contract is in effect in order to be assigned work or receive purchases under Subsections (i) and (ii).

(3) Established terms mandated by procurement unit or federal agency:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog mandated by the procurement unit or a federal agency, the procurement unit shall use one of the following methods to assign work or purchase from a vendor on an approved vendor list:

(i) A rotation system, organized alphabetically, numerically, or randomly;

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog based on a federal regulation for a health and human services program the procurement unit shall follow the requirements set forth in the applicable federal regulation to assign work or make a purchase.

(5) In accordance with the provisions set forth in Section 63G-6a-2105, the chief procurement officer may award a contract(s) to vendors on an approved vendor list on a statewide, regional, or combined statewide and regional basis.

R33-5-203. Performance Rating System for Vendors on an Approved Vendor List.

(1) A procurement unit may develop a performance rating system to evaluate the performance of vendors on an approved vendor list, provided the performance rating system is described in the Request for Statement of Qualifications used to establish the approved vendor list. and includes:

(a) The minimum performance rating threshold that approved vendors must achieve in order to remain on the approved vendor list; and

(b) A statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.

(2) A procurement unit that disqualifies and removes a vendor from an approved vendor list shall:

(a) Make a written finding that:

(i) Describes the performance rating system;

(ii) Identifies the minimum performance rating threshold; and

(iii) Explains the performance rating achieved by the disqualified vendor; and

(b) Provide a copy of the written finding to the disqualified vendor.

R33-5-204. Approved Vendor Lists -- Using Small Purchase Process.

(1) When awarding a contract to an approved vendor using the small purchasing process, the procurement unit shall follow the small purchase requirements set forth in Section 63G-6a-506 and the following Administrative Rules as applicable:

(a) Section R33-5-104. Small Purchases

(b) Section R33-5-105. Small Purchases Threshold for Design Professional Services;

(c) Section R33-5-106. Small Purchases Threshold for Construction Projects;

(d) Section R33-5-107. Quotes for Small Purchases from $1,001, to $50,000;

(e) Section R33-5-108. Small Purchases of Professional Service Providers and Consultants;

(2) Executive branch employees are required to use state contracts for all small purchases for procurement items available on state contract.

KEY: government purchasing, procurements, request for information

August 22, 2016 63G-6a

Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.
R33-6. Bidding.
R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

(1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the description of the procurement item(s)being sought, all criteria, requirements, factors, and formulas to be used for determining the lowest responsible and responsive bidder.

(3)(a) The award of a contract shall be to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.

(b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.

(c) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

R33-6-102. Bidder Submissions.

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

(a) the bidder's bid price;

(b) the bidder's acknowledged receipt of addenda issued by the procurement unit;

(c) the bidder to identify other applicable submissions; and

(d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of Section R33-7-105 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

(5) All bids must be based upon a definite calculated price

(a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;

(b) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and

(c) Bids may not be based on using another bidder's price, including a percentage discount, formula, other amount related to another bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

R33-6-103. Pre-Bid Conferences and Site Visits.

(1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.

(c) A pre-bid conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorize representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.

(2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-bid conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or

site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-bid conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-6-104. Addenda to Invitation for Bids.

Prior to the submission of bids, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

R33-6-105. Rejection of a Late Bid -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a bid after the time for submission of a bid has expired as set forth in Section 63G-6a-604(4).

(2) When submitting a bid electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the procurement unit will stop the process and the bid will not be accepted.

(3) When submitting a bid by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid being late.

(a) All bids received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a bid not being received by the established due date and time, the bid shall be accepted as being on time.

R33-6-106. Voluntary Withdrawal of a Bid.

A bidder may voluntarily withdraw a bid at any time before a contract is awarded with respect to the invitation for bids for which the bid was submitted provided the bidder is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

R33-6-107. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

R33-6-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-6-109. Only One Bid Received.

(1) If only one responsive and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

(a) a new invitation for bids solicited; or

(b) the procurement canceled.

R33-6-110. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or head of a procurement unit with independent procurement authority will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R33-6-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-6-112. Publication of Award.

(1) The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the contract is not awarded.

R33-6-113. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Section R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction
August 22, 2016 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.
R33-7. Request for Proposals.
R33-7-101. Conducting the Request for Proposals Standard Procurement Process.

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-7-102. Content of the Request for Proposals.

(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:

(a) a description of the format that offerors are to use when submitting a proposal including any required forms; and

(b) instructions for submitting price.

(2) The conducting procurement unit is responsible for all content contained in the request for proposals solicitation documents, including:

(a) reviewing all schedules, dates, and timeframes;

(b) approving content of attachments;

(c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and

(f) for executive branch procurement units the requirements of Section 63G-6a-110(6).

R33-7-103. Multiple Stage RFP Process.

(1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:

(a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and

(b) the methodology used to determine which proposals shall be disqualified from additional stages.

R33-7-103a. Multiple Stage Cost Qualification RFP Process.

Section 63G-6a-710 authorizes procurement units to use a multiple stage RFP process. This Rule sets forth the process for issuing a multiple stage RFP process where cost is evaluated prior to the technical requirements. The concept behind this "multiple stage cost qualification RFP process" is that for certain types of procurements, a procurement unit may not want to spend time evaluating the technical responses of proposals with cost estimates that exceed the stated budget or significantly exceed the lowest cost proposal. Statute does not restrict the number of stages that may occur in a multiple stage RFP, the number or type of criteria that may be used to evaluate proposals or the sequencing of when evaluation criteria must be evaluated. However, statute does place restrictions on procedures such as separating cost, when the evaluation committee can and cannot change scores, issuing a justification statement and, if applicable, conducting a cost-benefit analysis, and so on. The instructions contained in this multiple stage cost qualification RFP process comply with all provisions set forth in Utah Code Title 63G-6a, Part 7 and associated Rule R33-7.

(1) Definitions:

(a) "Multiple stage cost qualification RFP process" means a multiple stage RFP process in which cost proposals are evaluated prior to the evaluation of technical criteria and are used to reject offerors based on established cost criteria.

(b) "Maximum cost differential percentage threshold" is a cost ceiling that is established by the conducting procurement unit that an offeror's cost proposal must not exceed or the offeror's proposal will be rejected and the offeror will not be allowed to proceed to a subsequent stage. The maximum cost differential percentage threshold may be based on the following:

(i) The lowest cost proposal submitted;

(ii) The conducting procurement's stated budget; or

(iii) A combination of (i) and (ii).

(2) The chief procurement officer or head of procurement unit with independent procurement authority may issue a multiple stage RFP where cost is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent stages in accordance with the requirements set forth in Utah Code 63G-6a, Part 7 and Rule R33-7.

(3) When using the multiple stage cost qualification RFP process the conducting procurement unit shall establish and include in the RFP:

(a) The minimum mandatory pass or fail requirements that proposals must meet in stage one in order to move on to stage two;

(b) The maximum cost differential percentage threshold that proposals must not exceed in stage two in order to move on to stage three;

(c) The technical criteria and a score threshold that proposals must meet in stage three in order to be eligible to move on to stage four; and

(d) If applicable, the total combined score threshold in stage four that proposals must meet to determine best value and be eligible for contract award.

(4) Except as provided in Section 63G-6a-707(8), the following process shall be used to evaluate proposals and award a contract under this multiple stage process:

(a) During stage one, an individual assigned by the conducting procurement unit shall evaluate each offeror's proposal in response to the minimum mandatory pass or fail requirements set forth in the RFP:

(i) Offerors with proposals that do not meet the mandatory minimum pass or fail requirements shall be rejected and are not allowed to move on to subsequent stages and are not eligible to receive a contract award;

(ii) Offerors with proposals that meet the mandatory minimum pass or fail requirements shall be deemed qualified to move on to stage two;

(b) During stage two, the issuing procurement unit shall assign an individual, who is not a member of the evaluation committee, to evaluate the cost proposals of offerors qualified in stage one in response to the cost criteria and maximum cost differential percentage threshold set forth in the RFP.

(i) The individual assigned by the issuing procurement unit to evaluate cost proposals shall do so outside the presence of the evaluation committee and shall not share the cost proposals or the results of the cost proposal evaluations with the evaluation committee until all technical scoring is completed in stage three;

(ii) Offerors with cost proposals that exceed the maximum cost differential percentage threshold shall be rejected, not allowed to move on to subsequent stages, and not eligible to receive a contract award;

(iii) Offerors with cost proposals that do not exceed the maximum cost differential percentage threshold shall be deemed qualified to move on to stage three;

(iv) Cost shall be evaluated in accordance with Section 63G-6a-707(5)(b)(i); and

(v) A cost score shall be calculated based on the cost formula set forth in the RFP for each proposal identified in Subsection (3)(b)(iii) of this Rule;

(c) During stage three, the evaluation committee shall score the proposal of each offeror qualified in stage two, in

response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with Section R33-7-704 or rules established by the applicable rulemaking authority;

(d) During stage four, the individual assigned by the issuing procurement unit, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth in Section 63G-6a-707(5)(a) through (c);

(e) In order to determine best value to the procurement unit, the evaluation committee shall prepare a justification statement and, if applicable, a cost-benefit analysis, in accordance with Section 63G-6a-708 and 709; and

(f) A contract may be awarded to the offeror with the proposal having the highest total combined score, or multiple contracts may be awarded to offerors with proposals meeting the total combined score threshold set forth in the RFP, in accordance with Section 63G-6a-709.

(5) Maximum cost differential percentage thresholds include the following examples:

(a) Lowest Cost Proposal Example: The maximum cost differential percentage threshold is within 10% above the lowest cost proposal:

(i) Offerors with cost proposals that exceed 10% above the proposal with the lowest cost will be rejected. Offerors with cost proposals that do not exceed 10% above the proposal with the lowest cost will move on to the subsequent stage;

(b) Stated Budget Example: The maximum cost differential percentage threshold is within 5% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 5% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 5% above the stated budget will move on to the subsequent stage; and

(a) Combination Lowest Cost Proposal and Stated Budget Example: the maximum cost differential percentage threshold is within 8% above the lowest cost proposal and within 2% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 8% above the proposal with the lowest cost will be rejected and offerors with cost proposals that exceed 2% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 8% above the proposal with the lowest cost and do not exceed 2% above the stated budget will move on to the subsequent stage.

(6) Additional multiple stage RFP processes may be developed and used to cover the wide range of different procurements that public entities encounter, provided the processes comply with the requirements set forth in the Utah Procurement Code and Title R33.

R33-7-104. Exceptions to Terms and Conditions Published in the RFP.

(1) Offerors requesting exceptions and/or additions to the Standard Terms and Conditions published in the RFP must include the exceptions and/or additions with the proposal response.

(2) Exceptions and/or additions submitted after the date and time for receipt of proposals will not be considered unless there is only one offeror that responds to the RFP, the exceptions and/or additions have been approved by the Attorney General's Office or other applicable legal counsel, and it is determined by the head of the issuing procurement unit that it is not beneficial to the procurement unit to republish the solicitation.

(3) Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL

(4) A procurement unit may refuse to negotiate exceptions and/or additions:

(a) that are determined to be excessive;

(b) that are inconsistent with similar contracts of the procurement unit;

(c) to warranties, insurance, indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel;

(d) where the solicitation specifically prohibits exceptions and/or additions; or

(e) that are not in the best interest of the procurement unit.

(5) If negotiations are permitted, a procurement unit may negotiate exceptions and/or additions with offerors, beginning in order with the offeror submitting the fewest exceptions and/or additions to the offeror submitting the greatest number of exceptions and/or additions. Contracts may become effective as negotiations are completed.

(6) If, in the negotiations of exceptions and/or additions with a particular offeror, an agreement is not reached, after a reasonable amount of time, as determined by the procurement unit, the negotiations may be terminated and a contract not awarded to that offeror and the procurement unit may move to the next eligible offeror.

R33-7-105. Protected Records.

(1)(a) The following are protected records and may be redacted by the vendor subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. (a) Trade Secrets, as defined in Section 13-24-2 of the Utah Code.

(b) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2).

(c) Other Protected Records under GRAMA.

(2) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the proposal or submitted document:

(a) a written indication of which provisions of the proposal or submitted document are claimed to be considered for business confidentiality or protected (including trade secrets or other reasons for non-disclosure under GRAMA); and

(b) a concise statement of the reasons supporting each claimed provision of business confidentiality or protected.

R33-7-106. Notification.

(1) A person who complies with Section R33-7-105 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Section R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

R33-7-107. Process for Submitting Proposals with Protected Business Confidential Information.

(1) If an offeror submits a proposal that contains

information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

(a) One redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and

(b) One non-redacted version for evaluation purposes clearly marked as "Protected Business Confidential."

(i) Pricing may not be classified as business confidential and will be considered public information.

(ii) An entire proposal may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

R33-7-201. Pre-Proposal Conferences and Site Visits.

(1) Mandatory pre-proposal conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-proposal conferences and site visits allowing optional attendance by offerors are not permitted.

(c) A pre-proposal conference may be attended via the following:

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-proposal conferences and site visits must be attended by an authorized representative of the person or vendor submitting a proposal and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-proposal conference shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory pre-proposal conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any offeror that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-proposal conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all offerors that do not have an authorize representative in attendance for the entire pre-proposal conference or site visit to review any audio or video recording made.

(2)(a) If a pre-proposal conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-proposal conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-proposal conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-proposal conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-proposal conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-7-301. Addenda to Request for Proposals.

Addenda to the Request for Proposals may be made for the purpose of:

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

(b) Addenda shall be published within a reasonable time prior to the deadline that proposals are due, to allow prospective offerors to consider the addenda in preparing proposals. Publication at least 5 calendar days prior to the deadline that proposals are due shall be deemed a reasonable time. Minor addenda and urgent circumstances may require a shorter period of time.

(2) After the due date and time for submitting a response to Request for Proposals, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Request for Proposals may be limited to offerors that have submitted proposals, provided the addenda does not make a substantial change to the Request for Proposals that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority likely would have impacted the number of Offerors responding to the original publication of the Request for Proposals.

R33-7-402. Rejection of Late Proposals -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a proposal after the time for submission of a proposal has expired as set forth in Section 63G-6a-704(2).

(2) When submitting a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing time arrives, the procurement unit will stop the process and the proposal will not be accepted.

(3) When submitting a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal being late.

(a) All proposals received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a proposal not being received by the established due date and time, the proposal shall be accepted as being on time.

R33-7-501. Evaluation of Proposals.

(1) The evaluation of proposals shall be conducted in accordance with Part 7 of the Utah Procurement Code.

(2) An evaluation committee may ask questions of offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.

(3)(a) The evaluation of cost in an RFP shall be based on the entire term of the contract, excluding renewal periods.

(b) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost should not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

(c) Whenever practicable, the evaluation of cost should include maintenance and service agreements, system upgrades, apparatuses, and other components associated with the procurement item.

R33-7-501.5. Minimum Score Thresholds.

(1) An executive branch conducting procurement unit shall establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

(2) Minimum score thresholds must be set forth in the RFP and clearly describe the minimum score threshold that proposals must achieve in order to advance to the next stage in the RFP process or to be awarded a contract.

(3)(a) Thresholds may be based on:

(i) Minimum scores for each evaluation category;

(ii) The total of each minimum score in each evaluation category based on the total points available; or

(iii) A combination of (i) and (ii).

(b) Thresholds may not be based on:

(i) A natural break in scores that was not defined and set forth in the RFP; or

(ii) A predetermined number of offerors.

R33-7-502. Voluntary Withdrawal of a Proposal.

An offeror may voluntarily withdraw a proposal at any time before a contract is awarded with respect to the RFP for which the proposal was submitted provided the offeror is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5, or the Utah Procurement Code. Rule R33-7 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

(a) An evaluation committee may request best and final offers when:

(i) no single proposal addresses all the specifications;

(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;

(iii) additional information is needed in order for the evaluation committee to make a decision;

(iv) the differences between proposals in one or more categories are too slight to distinguish;

(v) all cost proposals are too high or over the budget;

(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

(2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.

(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

(b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

(5) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(6) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

(8) A request for best and final offers issued by a procurement unit shall:

(a) comply with all public notice requirements provided in Section 63G-6a-112;

(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;

(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;

(10) Unsolicited best and final offers will not be accepted from offerors.

R33-7-701. Cost-benefit Analysis Exception: CM/GC.

(1) A cost-benefit analysis is not required if the contract is awarded solely on the qualifications of the construction manager/general contractor and the management fee described in Section 63G-6a-708 provided:

(a) a competitive process is maintained by the issuance of a request for proposals that requires the offeror to provide , at a minimum:

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

(ii) monthly supervision fees for the construction phase; and

(iii) overhead and profit for the construction phase.

(c) the evaluation committee may, as described in the solicitation, weight and score the management fee as a fixed rate or a fixed percentage of the estimated contract value.

(d) the contract awarded must be in the best interest of the procurement unit.

R33-7-701.1. Cost-Benefit Analysis.

(1) A cost-benefit analysis conducted under Utah Code 63G-6a-708 shall be based on the entire term of the contract,

excluding any renewal periods.

R33-7-702. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and:

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable as set forth in R33-12-603 and R33-12-604; and

(iii) the proposal is in the best interest of the procurement unit.

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the procurement unit, the procurement unit shall issue a justification statement as set forth in 63G-6a-708 and may make an award.

(c) If an award is not made, the procurement unit may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

R33-7-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.

Evaluation committee members, employees of procurement units, and any other person involved in an RFP evaluation process are required to review Utah Code Title 63G-6a, Parts 7 and 24; and Section R33-7-703 prior to participating in the evaluation process.

(1)(a) In accordance with Section 63G-6a-704, the conducting procurement unit may conduct a review of proposals to determine if:

(i) the person submitting the proposal is responsible;

(ii) the proposal is responsive; and

(iii) the proposal meets the mandatory minimum requirements set forth in the RFP.

(b) An evaluation committee may not evaluate proposals deemed non-responsive, not responsible or not meeting the mandatory minimum requirements of the RFP.

(2)(a) Prior to the evaluation and scoring of proposals, an employee from the issuing procurement unit will meet with the evaluation committee, staff members of the conducting procurement unit, and any other person involved in the procurement process that may have access to the proposals to:

(i) Explain the evaluation and scoring process;

(ii) Discuss requirements and prohibitions pertaining to:

(A) socialization with vendors as set forth in Section R33-24-104;

(B) financial conflicts of interest as set forth in Section R33-24-205;

(C) personal relationships, favoritism, or bias as set forth in Section R33-24-106;

(D) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and

(E) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-24-108.

(iii) review the scoring sheet and evaluation criteria set forth in the RFP; and

(iv) provide a copy of Section R33-7-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.

(b) Prior to participating in any phase of the RFP process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest as set forth in Section 63G-6a-707 and Section R33-24-107.

(i) At each stage of the procurement process, the conducting procurement unit is required to ensure that evaluation committee members, employees of the procurement unit and any other person participating in the procurement process:

(A) do not have a conflict of interest with any of the offerors;

(B) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and

(C) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(3) Unless an exception is authorized by the head of the issuing procurement unit, the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee has finalized its scoring of non-price technical criteria for each proposal and submitted those scores to the issuing procurement unit as set forth in Section 63G-6a-707.

(4)(a) In accordance with Section 63G-6a-707, the conducting procurement unit shall appoint an evaluation committee to evaluate each responsive and responsible proposal that has not been rejected from consideration under the provisions of the Utah Procurement Code, using the criteria described in the RFP.

(b) Using the provisions set forth in Section R33-7-705, the evaluation committee shall exercise independent judgement in the evaluation and scoring of the non-priced technical criteria in each proposal.

(c) Proposals must be evaluated solely on the criteria listed in the RFP. The evaluation committee shall assess each proposal's completeness, accuracy, and capability of meeting the technical criteria listed in the RFP.

(d) The evaluation committee may receive assistance from an expert or consultant authorized by the conducting procurement unit in accordance with the provisions set forth in Section 63G-6a-707(4).

(e) The evaluation committee may enter into discussions, conduct interviews with, or attend presentations by responsible offerors with responsive proposals that meet the mandatory minimum requirements of the RFP for the purpose of clarifying information contained in proposals in accordance with the provisions set forth in Section 63G-6a-707(5).

(5) After each proposal has been independently evaluated by each member of the evaluation committee, each committee member independently shall assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the RFP.

(a) After completing the preliminary draft scoring of the non-priced technical criteria for each proposal, the evaluation committee shall enter into deliberations to:

(i) review each evaluation committee member's preliminary draft scores;

(ii) resolve any factual disagreements;

(iii) modify their preliminary draft scores based on their updated understanding of the facts; and

(iv) derive the committee's final recommended consensus score for the non-priced technical criteria of each proposal.

(b) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that a proposal be rejected for being non-responsive, not responsible, not meeting the mandatory minimum requirements, or not meeting any applicable minimum score threshold.

(c) If an evaluation committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled.

(d) In order to score proposals fairly, an evaluation committee member must be present at all evaluation committee

meetings and must review all proposals, including if applicable oral presentations. If an evaluation committee member fails to attend an evaluation committee meeting or leaves a meeting early or fails for any reason to fulfill the duties and obligations of a committee member, that committee member shall be removed from the committee. The remainder of the evaluation committee members may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(i) Attendance or participation on an evaluation committee via electronic means such as a conference call, a webcam, an online business application, or other electronic means is permissible.

(6)(a) The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria of each proposal using the following methods:

(i) the total of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee; or

(ii) an average of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee.

(b) The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the issuing procurement unit for review.

(7) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the issuing procurement unit, unless the issuing procurement unit authorizes that a best and final offer process to be conducted under the provisions set forth in Section 63G-6a-707.5 and Section R33-7-601.

(8) In accordance with Section 63G-6a-707, the issuing procurement unit shall:

(a) review the evaluation committee's final recommended scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation in accordance with Sections 63G-6a-106(4) or 63G-6a-303(3).

(b) score the cost of each proposal based on the applicable scoring formula; and

(c) calculate the total combined score for each proposal.

(9) The evaluation committee may, with approval from the issuing procurement unit, request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

(10) The evaluation committee and the conducting procurement unit shall prepare a justification statement and any applicable cost-benefit analysis in accordance with Section 63G-6a-708.

(11) The issuing procurement unit's role as a non-scoring member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah Procurement Code and applicable Rules.

(12)(a) The head of the issuing procurement unit may remove a member of an evaluation committee for:

(i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;

(ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;

(iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;

(iv) having inappropriate contact or communication with a person responding to a solicitation;

(v) socializing inappropriately with a person responding to a solicitation;

(vi) engaging in any other action or having any other association that causes the head of the issuing procurement unit to conclude that the individual cannot fairly evaluate a solicitation response; or

(vii) any other violation of a law, rule, or policy.

(b) The head of the issuing procurement unit may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (12)(a). If an impropriety cannot be cured by replacing a member, the head of the issuing procurement unit may appoint a new evaluation committee, cancel the procurement or cancel and reissue the procurement.

R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals Meeting Mandatory Minimum Requirements.

(1) The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in an RFP shall be based on a one through five point scoring system.

(2) Points shall be awarded to each applicable evaluation category as set forth in the RFP, including but not limited to:

(a) Technical specifications;

(b) Qualifications and experience;

(c) Programming;

(d) Design;

(e) Time, manner, or schedule of delivery;

(f) Quality or suitability for a particular purpose;

(g) Financial solvency;

(h) Management and methodological plan; and

(i) Other requirements specified in the RFP.

(3) Scoring Methodology:

(a) Five points (Excellent): The proposal addresses and exceeds all of the requirements described in the RFP;

(b) Four points (Very Good): The proposal addresses all of the requirements described in the RFP and, in some respects, exceeds them;

(c) Three points (Good): The proposal addresses all of the requirements described in the RFP in a satisfactory manner;

(d) Two points (Fair): The proposal addresses the requirements described in the RFP in an unsatisfactory manner; or

(e) One point (Poor): The proposal fails to addresses the requirements described in the RFP or it addresses the requirements inaccurately or poorly.

R33-7-705. Evaluation Committee Members Required to Exercise Independent Judgment.

(1)(a) Evaluators are required to exercise independent judgment in a manner that is not dependent on anyone else's opinions or wishes.

(b) Evaluators must not allow their scoring to be inappropriately influenced by another person's wishes that additional or fewer points be awarded to a particular offeror.

(c) Evaluators may seek to increase their knowledge before scoring by asking questions and seeking appropriate information from the conducting procurement unit or issuing procurement unit. Otherwise, evaluators should not discuss proposals or the scoring of proposals with other persons not on the evaluation committee.

(2)(a) The exercise of independent judgment applies not only to possible inappropriate influences from outside the evaluation committee, but also to inappropriate influences from within the committee. It is acceptable for there to be discussion and debate within the committee regarding how well a proposal meets the evaluation criteria. However, open discussion and debate may not lead to coercion or intimidation on the part of one committee member to influence the scoring of another committee member.

(b) Evaluators may not act on their own or in concert with

another evaluation committee member to inappropriately steer an award to a favored vendor or to disfavor a particular vendor.

(c) Evaluators are required to report any attempts by others to improperly influence their scoring to favor or disfavor a particular offeror.

(d) If an evaluator feels that the evaluator's independence has been compromised, the evaluator must recuse himself or herself from the evaluation process.

R33-7-802. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Section R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Section R33-7-105;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Section R33-7-105.

(2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(b) any individual scorer's/evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

KEY: government purchasing, request for proposals, standard procurement process
August 22, 2016 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Purchasing and General Services.
R33-8. Exceptions to Standard Procurement Process.
R33-8-101. Award of Contract Without Engaging in a Standard Procurement Process.

(1) Under the provisions set forth in Section 63G-6a-802, the chief procurement officer or head of a procurement unit with independent procurement authority may award a contract without engaging in a standard procurement process under the following circumstances:

(a) There is only one source for the procurement item;

(b) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis document that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or

(c) Other circumstances described by the applicable rulemaking authority that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit.

R33-8-101a. Sole Source Contract Awards.

(1) The underlying purposes and policies of the Utah Procurement Code are to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. Sole source contract awards do not involve a standard procurement process and should only be used when justified after reasonable research has been conducted to determine if there are other available sources and an analysis has been conducted to determine if a sole source award is cost justified.

(2) Circumstances for which a sole source contract award may be justified include procurements for:

(a) A procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;

(b) A component or replacement part for which there is no commercially available substitute, and which can be obtained only directly from the manufacturer; or

(c) An exclusive maintenance, service, or warranty agreement.

(3) Prior to awarding a sole source contract, the chief procurement officer or head of a procurement unit with independent procurement authority shall, whenever practicable, conduct a price analysis in accordance with Section R33-12-603.

(4) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a contract without engaging in a standard procurement process.

R33-8-101b. Transitional Costs -- Cost-Benefit Analysis.

(1) For the purpose of this section, the following definitions shall apply:

(a) "Competing type of procurement item" means a type of procurement item that is the same, equivalent, or superior to the existing type of procurement item currently under contract in all material aspects including:

(i) performance;

(ii) specifications;

(iii) scope of work; and

(iv) provider qualifications, certifications, and licensing.

(b) "Competing provider" means another provider other than the existing provider under contract that provides a competing type of procurement item.

(c) "Significant", "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:

(i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and

(ii) provides a compelling justification for not conducting a competitive standard procurement process.

(2) Transitional costs that must be considered in a cost-benefit analysis include:

(a) Costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(b) A full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items in order to determine which procurement item is more cost-effective.

(3) Transitional costs that may be considered in a cost-benefit analysis include:

(a) Costs identified in Subsection 63G-6a-103(95)(b);

(b) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted within the last 12 months;

(c) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted prior to the most recent 12 months, updated using an applicable price index;

(d) Written cost estimates obtained by the conducting procurement unit from a competing provider(s) for a competing type of procurement item; and

(e) Other transitional costs determined to be applicable by the chief procurement officer or head of a procurement unit with independent procurement authority.

(4) Transitional costs or other information that may not be considered in a cost-benefit analysis include:

(a) Costs prohibited in Subsection 63G-6a-103(95)(c);

(b) Data provided by the existing provider for the purpose of establishing:

(i) the market value of the existing type of procurement item; or

(ii) a competing provider's price for a competing type of procurement item;

(c) Costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;

(d) Non-monetary factors, such as the provider's performance, agency preference, and other data or information not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;

(e) Factors other than the monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(f) Other transitional costs or other information deemed inappropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

(5) The conducting procurement unit shall complete a written cost-benefit analysis and submit it to the issuing procurement unit for approval.

(6) The cost-benefit analysis should not be overly time-consuming to complete or involve hiring costly consultants or financial analysts.

R33-8-101c. Other Circumstances That May Make

Awarding a Contract Through a Standard Procurement Process Impractical.

(1) In accordance with Section 63G-6a-802(1)(c), the chief procurement officer or head of a procurement unit with independent procurement authority may consider, as applicable, the following circumstances when making a determination as to whether awarding a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:

(a) a contract award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(b) public utility services, when only one public utility service is available in an area;

(c) an item where compatibility is the overriding consideration; or

(d) a used procurement item that presents a unique, specialized, or time-limited buying opportunity.

R33-8-101d. Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1)(a) The division shall make available a Form titled: "Notice of intent to award a contract without engaging in a standard procurement process" that requires the conducting procurement unit to provide, at a minimum, the following information:

(i) a description of the procurement item, including, when applicable, the proposed scope of work;

(ii) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(iii) the duration of the proposed contract;

(iv) the signature of an authorized official of the conducting procurement unit; and

(v) research completed by the conducting procurement unit documenting that:

(A) There are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-8-101a;

(B) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis documenting that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101b; or

(C) Other circumstances that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101c.

(b) A procurement unit with independent procurement authority may use the division's Form or develop its own Form to provide notice of intent to award a contract without engaging in a standard procurement process that contains, at a minimum, the same basic information in Subsection (1)(a).

(c) The conducting procurement unit shall submit in writing a completed "Notice of intent to award a contract without engaging in a standard procurement process" to the chief procurement officer, or head of a procurement unit with independent procurement authority for approval.

R33-8-101e. Public Notice -- Waiver of Public Notice.

(1) Except as provided in Subsection (2), publication of a "Notice of intent to award a contract without engaging in a standard procurement process" shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds $50,000.

(2)(a) When making a determination under Sections R33-8-101a, 101b, or 101c, the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement to publish the "Notice of intent to award a contract without engaging in a standard procurement process" for the following procurements:

(i) procurements of $50,000 or less;

(ii) public utility services;

(iii) conference and convention facilities with unique or specialized amenities, abilities, location, or services;

(iv) conference fees, including materials;

(v) membership dues;

(vi) speakers or trainers with unique or proprietary presentations or training materials;

(vii) hosting of in-state, out-of-state, and international dignitaries;

(viii) international, national, or local promotion of the state or a public entity,

(ix) an award when the Legislature identifies the intended recipient of a contract;

(x) an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(xi) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or

(xii) other circumstances as determined in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority.

(b) The chief procurement officer or head of a procurement unit with independent procurement authority may require publication of a "Notice of intent to award a contract without engaging in a standard procurement process" for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

R33-8-101f. Contesting a Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1) A person may contest the notice of intent to award a contract without engaging in a standard procurement process prior to the closing of the public notice period set forth in Section 63G-6a-112 by submitting the following information in writing to the chief procurement officer or head of a procurement unit with independent procurement authority:

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation that:

(i) there are other competing sources for the procurement item;

(ii) transitional costs are not significant, unreasonable, or cost-prohibitive; or

(iii) conducting a standard procurement process is in the best interest of the conducting procurement unit.

(2) Upon receipt of a challenge contesting an award of a contract without engaging in a standard procurement process, the chief procurement officer or the head of a procurement unit with independent procurement authority shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

(a) If a challenge is upheld, the conducting procurement unit shall conduct a standard procurement process for the procurement item being considered or cancel the procurement;

(b) If a challenge is not upheld, the conducting procurement unit may proceed with awarding a contract without engaging in a standard procurement process.

(3) A vendor's right to file a protest under Title 63G,

Chapter 6a; Part 16, is not waived by a vendor's actions to contest or challenge a procurement unit's notice of intent to award a contract without engaging in a standard procurement process under Section R33-8-101f.

R33-8-102. Adding Additional Funds to a Contract.

(1) Adding funds to an existing contract constitutes an expenditure of public funds without competition and is an exception to the standard procurement process. Two of the purposes of the Utah Procurement Code identified in Section 63G-6a-102 are to ensure the fair and equitable treatment of all persons who deal with the procurement system; and to provide increased economy in state procurement activities. In order to achieve these competing objectives, when adding additional funds to a contract, the following provisions shall apply to executive branch procurement units:

(a) Up to 25 percent in additional funds may be added to the initial total amount of a contract issued and conducted by an executive branch procurement unit if, after reviewing the applicable laws and rules, the chief procurement officer or head of a procurement unit with independent procurement authority approves adding the additional funds.

(b) Over 25 percent in additional funds may be added to the initial total amount of a contract issued and conducted by an executive branch procurement unit if approved by the chief procurement officer or head of an executive branch procurement unit with independent procurement authority and the Attorney General's Office. The approval from the Attorney General's Office shall include a written determination that adding the additional funds does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

(c) Explicit statutory authorization to add additional funds to a specific existing contract issued and conducted by an executive branch agency overrides subsections (a) and (b).

(d) Additional funds may only be added to an existing contract for the procurement item(s) identified in the scope of work or procurement specifications set forth in the solicitation and resulting contract.

R33-8-110. Extension of a Contract Without Engaging in a Standard Procurement Process.

(1) One of the underlying purposes and policies of the Utah Procurement Code is to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.

(2) Pursuant to Section 63G-6a-103, "contract administration" is a duty of the conducting procurement unit and includes all functions, duties, and responsibilities associated with closing out a contract. In fulfillment of these duties, the conducting procurement unit shall maintain a process or system for tracking contract expiration dates in order to determine well in advance of a contract expiration date if there is a continuing need for the procurement item. If the conducting procurement unit determines there is a continuing need for the procurement item, the conducting procurement unit shall whenever practicable:

(a)(i) Initiate a standard procurement process no later than 90 days prior to the contract expiration date of an existing contract; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item; or

(b)(i) If the conducting procurement unit determines that a procurement will be complex or involve a change in industry standards or new specifications requiring negotiations, no later than 180 days prior to the contract expiration date, initiate a standard procurement process; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item.

(3) The following do not justify an extension of a contract under Section 63G-6a-802.7:

(a) A procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and

(b) A procurement unit or vendor's intentional delay in executing a contract to replace an expiring contract.

(4) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension, may be classified as "steering a contract to a favored vendor" which is reportable as unlawful conduct under Section 63G-6a-2407.

R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.3, Utah Procurement Code.

R33-8-301. Reserved.

Reserved.

R33-8-401. Emergency Procurement.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

(2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

(3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

(a) Circumstances that may create harm or risk to health, welfare, safety, or property include:

(i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;

(ii) failure or eminent failure of a public building, equipment, road, bridge or utility;

(iii) terrorist activity;

(iv) epidemics;

(v) civil unrest;

(vi) events that impair the ability of a public entity to function or perform required services;

(vii) situations that may cause harm or injury to life or property; or

(viii) other conditions as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

(5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R33-8-501. Declaration of "Official State of Emergency".

Upon a declaration of an "Official State of Emergency" by the authorized state official, the chief procurement officer shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

KEY: government purchasing, exceptions to procurement requirements, emergency procurement
August 22, 2016 63G-6a
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R33. Administrative Services, Purchasing and General Services.
R33-9. Cancellations, Rejections, and Debarment.
R33-9-101. General Provisions.

(1) An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interests of the procurement unit as determined by the procurement unit. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

(a) re-solicit new bids or proposals using the same or revised specifications; or,

(b) withdraw the requisition for the procurement item(s).

R33-9-102. Re-solicitation.

(1) In the event there is no initial response to an initial solicitation, the chief procurement officer or head of a procurement unit with independent procurement authority may:

(a) contact the known supplier community to determine why there were no responses to the solicitation;

(b) research the potential vendor community; and,

(c) based upon the information in (a) and (b) require the conducting procurement unit to modify the solicitation documents.

(2) If the conducting procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the chief procurement officer or head of a procurement unit with independent procurement authority, shall:

(a) require the conducting procurement unit to further modify the procurement documents; or,

(b) cancel the requisition for the procurement item(s).

R33-9-103. Cancellation Before Award.

(1) When it is determined before award but after opening that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror the solicitation shall be cancelled.

(2) A solicitation may be cancelled before award but after opening all bids or offers when the procurement unit determines in writing that an infraction of code, rule, or policy has occurred or that there is other good cause including:

(a) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;

(b) the specifications in the solicitation have been or must be revised;

(c) the procurement item(s) being solicited are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;

(e) bids or offers received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

(f) except as provided in Section 63G-6a-607, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the chief procurement officer or head of a procurement unit with independent procurement authority cannot determine the reasonableness of the bid price or cost proposal;

(g) the responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or,

(h) no responsive bid or offer has been received from a responsible bidder or offer;

R33-9-104. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay award beyond the bidders' or offerors' acceptance periods, the bidders or offerors should be requested, before expiration of their bids or offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R33-9-201. Rejections and Debarments.

An issuing procurement unit may reject any or all bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

R33-9-202. Conformity to Solicitation Requirements.

(1)(a) Any bid or offer that fails to conform to the essential requirements of the solicitation shall be rejected.

(b) Any bid or offer that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate bids or offers and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.

(c) Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

(2) A bid or offer shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability to the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:

(a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;

(b) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;

(c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;

(d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or

(e) limits rights of the State under any contract clause.

(3) A bidder or offeror may be requested to delete objectionable conditions from a bid or offer provided doing so is not prejudicial to other bidders or offerors, or the conditions do not go to the substance, as distinguished from the form, of the bid. A condition goes to the substance of a bid or offer where it affects price, quantity, quality, or delivery of the procurement item(s) offered.

R33-9-203. Unreasonable or Unbalanced Pricing.

(1)(a) Any bid or offer may be rejected if the chief procurement officer or head of a procurement unit with independent procurement authority determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid or offer, but the prices for individual line items as well.

(b) Any bid or offer may be rejected if the prices for any line items or subline items are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced

pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when:

(i) startup work, mobilization, procurement item sample production or testing are separate line items;

(ii) base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(c) All bids or offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the procurement unit shall:

(i) consider the risks to the procurement unit associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(d) A bid or offer may be rejected if the procurement unit and the chief procurement officer or head of a procurement unit with independent procurement authority determine that the lack of balance poses an unacceptable risk to the State.

R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.

(1) Subject to Section 63G-6a-903, the chief procurement officer or head of a procurement unit with independent procurement authority shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42).

(2) In accordance with Section 63G-6a-604(3) the chief procurement officer or head of a procurement unit with independent procurement authority may not accept a bid that is not responsive. Responsiveness is defined in Section 63G-6a-103(43).

(3) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.

(4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and available for public inspection.

R33-9-301. Rejection for Suspension/Debarment.

Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

KEY: government purchasing, cancellations, rejections, debarment
August 22, 2016 63G-6a
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R33. Administrative Services, Purchasing and General Services.
R33-21. Interaction Between Procurement Units.
R33-21-101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-21-201. State Cooperative Contracts.

(a) An executive branch procurement unit shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-506(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(b) In accordance with Section 63G-6a-2105, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R33-21-201e. Division May Charge Administrative Fees on State Cooperative Contracts - Prohibition Against Other Procurement Units Charging Fees on State Contracts.

(1) In accordance with Section 63A-1-109.5, 63A-2-103(3), 63G-6a-303(2)(b), and other applicable State of Utah law, the Director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization.

(2) The Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

R33-21-301. Discount Pricing for Large Volume Purchases for Items on State Contract.

(1) Eligible users of state cooperative contracts may seek to obtain additional volume discount pricing for large volume orders provided state cooperative contractors are willing to offer additional discounts for large volume orders.

(a) Eligible users may not coerce, intimidate or in any way compel vendors on state cooperative contracts to offer additional discount pricing.

(b) Eligible users seeking additional pricing discounts for large volume purchases shall issue a "Request for Price Quotations" to each vendor on a state cooperative contract for the procurement item being purchased.

(c) Executive branch procurement units without independent procurement authority shall contact the division to issue the request for price quotations.

(d) The request for price quotations shall include:

(i) a detailed description of the procurement item;

(ii) the estimated number or volume of procurement items that will be purchased;

(iii) the period of time that price quotations will be accepted, including the date and time price quotations will be opened;

(iv) the manner in which price quotations will be accepted;

(v) the place where price quotations shall be submitted; and

(vi) the period of time the price quotation must be guaranteed.

(e) Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

(f) Price quotations will be opened in the presence of a minimum of two witnesses.

(g) Price quotations will become public at the time of the opening.

(2) All terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.

(3) This process may not be used for:

(a) an anti-competitive practice such as:

(i) bid rigging;

(ii) steering a contract to a preferred state cooperative contractor;

(iii) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;

(iv) disclosing pricing or other confidential information prior to the date and time of the opening; or

(v) any other practice prohibited by the Utah Procurement Code.

(4) All sales resulting from the quotations received under the process conducted in accordance with Section R33-21-301 shall be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and shall be reported to the division.

KEY: cooperative purchasing, state contracts, procurement units
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R33. Administrative Services, Purchasing and General Services.
R33-24. Unlawful Conduct and Ethical Standards.
R33-24-101. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-24-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:

(a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties."

(b) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R33-24-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:

(a) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R33-24-104. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

(a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If an executive branch procurement professional participates in a social activity prohibited under R33-24-104(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R33-24-105. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest is a situation in which the potential exists for an executive branch employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the State's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:

(a) relating to the employee or a family member of the employee; or

(b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Offers' and Employees' Ethics Act.

R33-24-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.

(1) Executive branch employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an executive branch employee has a personal relationship, favoritism, or bias toward any individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

R33-24-107. Professional Relationships and Social Acquaintances Not Prohibited.

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Section R33-24-105, Section R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

R33-24-108. Ethical Standards for an Employee of a Procurement Unit Involved in the Procurement Process.

An employee of a procurement unit involved in the

procurement process shall uphold and promote the independence, integrity, and impartiality of the procurement process as required in the Utah Procurement Code and, as applicable, Title R33 and shall avoid impropriety and the appearance of impropriety.

KEY: executive branch employees, procurement code, procurement professionals, unlawful conduct
August 22, 2016 63G-6a

R52. Agriculture and Food, Horse Racing Commission (Utah).
R52-7. Horse Racing.
R52-7-1. Authority.

Promulgated under authority of Section 4-38-4.

R52-7-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Horse Racing Types:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35. "Objection" means:

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

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

Agent before the race is declared official.

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

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

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

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

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

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

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

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

44. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R52-7-10(8).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R52-7-3. Commission Powers and Jurisdiction.

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

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

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

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

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

D. To generate public revenues.

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

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

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

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

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

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

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

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

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

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

R52-7-4. Racing Organization.

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

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

3. Commission May Demand Information. The Commission may require any racing organization or prospective racing organization to furnish the Commission with a detailed proposal and disclosures as to its proposed racing program, purse, program, financial projections, racing officials, principals or shareholders, plants, premises, facility, finances, lease arrangements, agreements, contracts, and such other information as the Commission may require to determine the eligibility and qualification of the organization to conduct a race meeting; all in addition to that required in the application form set forth in Subsection R52-7-4(4) and as required by Section 4-38-4.

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

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

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

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

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

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

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

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

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

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

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

A separate application upon a form prescribed and furnished by the Commission shall be filed for each race meeting which such person proposes to conduct. The application, if made by a person, shall be signed and verified

under oath by the person; and if made by more than one person or by a partnership, shall be signed and verified under oath by at least two of the persons or members of the partnership; and if made by an association, a corporation, or any other entity, shall be signed by the President, attested to by the Secretary under the seal of such association or corporation, if it has a seal, and verified under oath by one of the signing officers.

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

I. In considering the granting or denying of all organization's application for a license to conduct horse racing with the non pari-mutuel system of wagering, the following criteria, standards, and guides should be considered by the Commission:

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

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

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

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

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

requirements, qualifications, and track rules do not conflict with Utah State Law or the Rules, Regulations, and Orders of the Commission. Such information shall be published in the Condition Book, posted on the organization's bulletin boards, or otherwise made available to all licensees participating at its race meeting.

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

9. Right Of Commission To Information. The organization may be asked to furnish the Commission, on forms approved by the Commission, a daily itemized report of the receipts of attendance, parking, concessions, commissions, and any other requested information. The organization shall also provide a corrected official program, completed race results charts approved by the Commission, and any other information the Commission may require. Such daily reports shall be filed with the Commission within 72 hours of the race day.

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

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

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

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

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

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

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

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

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

kinescope print or copy of the videotape recording of any race.

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

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

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

22. Bulletin Boards Required. The organization shall erect and maintain a glass enclosed bulletin board close to the Racing Secretary's Office in a place where access is granted to all licensees, upon which all official notices of the Commission shall be posted. The organization shall also erect and maintain a glass enclosed bulletin board in the grandstand area where access is granted to all race day patrons, upon which all official notices of the Commission shall be posted.

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

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

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

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

TABLE

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

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

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

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

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

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

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

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

F. A Test Barn with a minimum of two stalls shall be provided for purpose of collecting urine specimens. The Test Barn and a walking ring large enough to accommodate several horses cooling out at the same time shall be completely enclosed by a fence at least eight feet high of chain link, v-mesh or similar construction. There shall be only one entrance into the Test Barn enclosure which shall remain locked or guarded at all times. Provisions shall be

made in this area for an office to accommodate the needs of the Official Veterinarian and from which he can observe the stalls and the entrance into the Test Barn enclosure. The organization shall provide facilities for the immediate cooling and freezing of all urine specimens, and shall make provisions for the specimens to be shipped to the laboratory packed in dry ice.

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

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

R52-7-5. Occupation Licensing and Registration.

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

A. A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required fee and procure the appropriate license or licenses.

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

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

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

D. The date of payment of all required fees as recorded by the Commission shall be the effective date of issuance of a continuous occupation license. A person may have the option of a one or three year license. The license fee shall be the annual fee for each category in which the person is licensed, the fee for a three (3) year license shall be three (3) times the annual fee for each category in which the person is licensed. The license shall expire on December 31.

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

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

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

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

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

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

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

All license identification badges may be color coded as to capacity of occupation and eligibility for access to restricted areas. All license holders, except jockeys riding in a race, must wear a current identification badge while present in restricted areas of the enclosure or as otherwise specified in Subsection R52-7-5(1).

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

7. License Subject To Conditions And Agreements.

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

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

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

D. The Commission may restrict, limit, place conditions on, or endorse for additional occupational classes, any license, R52-7-5(9).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R52-7-6. Racing Officials and Commission Racing Personnel.

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

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

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

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

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

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

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

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

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

B. A horse is involved with:

i. Any violation of medication laws and rules;

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

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

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

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

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

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

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

14. Substitution Of Jockey Or Trainer.

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

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

15. Stewards' List. The stewards may maintain a stewards' list of those horses which, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance due to the inability to maintain a straight course, or any other reason considered a hazard to the safety of the participants. Such horse shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely and can be removed from the stewards' list.

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

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

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

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

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

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

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

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

24. Duties Of The Official Veterinarian. The official veterinarian must be a graduate veterinarian and licensed to practice in the State of Utah. He or she shall recommend to

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

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

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

R52-7-7. Entries and Declarations.

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

2. Racing Secretary To Establish Conditions. The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and such other conditions as are necessary to provide and conduct the organization's race meeting. The racing secretary is responsible for the receipt of entries and declarations for all races. The racing secretary, employees of their department, or racing officials shall not disclose any pertinent information concerning entries which have been submitted until all entries are closed. After an entry to a race for which conditions have been published has been accepted by the racing secretary or their delegate, no condition of such race shall be changed, amended or altered, nor shall any new condition for such race be imposed.

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

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

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

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

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

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

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

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

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

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

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

Authority or Stud Book Registry.

H. Such horse is a suspended horse.

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

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

K. A horse has not been lip tattooed by a Commission approved tattooer.

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

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

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

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

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

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

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

11. Deadline For Arrival Of Entered Horses. All horses scheduled to compete in a race must be present within the enclosure no later than 30 minutes prior to their scheduled race without stewards' approval. Horses not within the enclosure by their deadline may be scratched and the trainer subject to fine and/or suspension.

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

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

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

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

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

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

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

R52-7-8. Veterinarian Practices, Medication and Testing Procedures.

1. Veterinary Practices - Treatment Restricted. Within the time period of 24 hours prior to the post time for the first race of the week until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the

Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

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

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

4. Drugs Or Medication. Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analogs, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race which are outside of the approved drug threshold levels set forth by California Horse Racing Board (CHRB) Rule No. 1844 (Effective 02/14/12), Authorized Medication, with sections (h)(2),(e)(9) and (f) exempted, hereby incorporated by reference. shall result in disqualification by the Stewards. Accordingly clenbuterol will be treated the same as all other drugs that are not specifically authorized. If the testing laboratory detects clenbuterol or its metabolites or analogs under the laboratory's standard operating procedures, the finding will be reported as a violation. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

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

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

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

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

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

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

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

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

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

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

13. Split Samples. As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of

his horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R52-7-8-4 and R52-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

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

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

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

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

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

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

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

R52-7-9. Running the Race.

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

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

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

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

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

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

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

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

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

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

11. Requirements For Horse, Trainer, And Jockey. Every horse must be in the paddock at the time appointed by the stewards before post time for their race. Every horse must be saddled in the paddock stall designated by the paddock judge unless special permission is granted by the stewards to saddle elsewhere. Each trainer or their assistant trainer

having the care and custody of such horse shall be present in the paddock to supervise the saddling of the horse and shall give such instructions as may be necessary to assure the best performance of the horse. Every jockey participating in a race shall give their best effort in order to facilitate the best performance of their horse.

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

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

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

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

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

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

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

19. Ramifications Of A Disqualification. When a horse is disqualified by the stewards, every horse in the race owned wholly or in part by the same owner, or trained by the same trainer, may be disqualified. When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus 0.01 of a second penalty, or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

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

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

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

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

24. Time Trial Qualifiers. When two or more time trial contestants have the same qualifying time, to a degree of .001 of a second, or more exact measurement if photo finish equipment permits, for fewer positions in the finals or consolation necessary for all contestants, then a draw by lot will be conducted in accordance with Subsection R52-7-7(17). However, no contestant may draw into a finals or consolation instead of a contestant which out finished such contestant. When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, no organization licensee shall move the starting gates or allow the starting gates to be moved until all trial heats are complete, except in an emergency as determined by the stewards.

R52-7-10. Objections and Protests; Hearing and Appeals.

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

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

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

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

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

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

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

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

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

5. Protests. A protest against any horse which has started in a race shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race, except as noted in Subsection R52-7-10(8). Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for protest. The stewards upon their own motion may consider a protest at any time.

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

A. Any ground for objection set forth in R52-1-10(3).

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

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

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

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

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

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

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

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

11. Notification Of And Representation At Hearing. Adequate notice of hearing shall be given to every summoned person in accordance with the procedures set forth in Subsection R52-7-3(6). Every person alleged to have committed a rule violation or who is called to testify before the stewards is entitled at the persons expense to have counsel present evidence and witnesses on his behalf and to cross-examine other witnesses at the hearing.

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

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

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

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

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

17. Rulings By The Stewards. Any ruling or order issued by the stewards shall specify the full name of the licensee or person subject to the ruling or order; most recent

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

18. Summary Suspension Of Occupation Licensee. If the stewards or the Commission find that the public health, safety, or welfare require emergency action and incorporates such finding to that effect in any Order, summary suspension may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in Subsection R52-7-10(19).

19. Duration Of Suspension Or Revocation. Unless execution of an order of suspension or revocation is stayed by the Commission or a court of competent jurisdiction, a person's occupation license, suspended or revoked, shall remain suspended or revoked until the final determination has been made pursuant to the provisions of Section R52-7-5.

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

A. The stewards mistakenly interpreted the law; or

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

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

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

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

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

24. Temporary Stay Order. The Executive Director may, upon consultation with the direction of a minimum of three Commissioners, issue or deny a temporary stay order to stay execution of any ruling, order or decision of the stewards except stewards' decisions regarding disqualifications for interference during the running of a race. Any application for a temporary stay shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; shall set forth the facts and any evidence to justify the issuance of the stay; and shall be filed with the Office of the Commission as specified in Subsection R52-7-3(7). The granting of a temporary stay order shall carry no presumption that the stayed decision of the stewards is or may be invalid, and a temporary stay order may be dissolved at any time by further order of the executive director upon consultation with and the direction of a minimum of three Commissioners.

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

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

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

R52-7-11. General Conduct.

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

2. Trainer Responsibility. The trainer is presumed to know the "Rules of Racing" and is responsible for the condition, soundness, and eligibility of the horses he enters in a race. Should the chemical analysis, urine or otherwise, taken from a horse under his supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the trainer or person or persons under his supervision having care or custody of such horse. At the discretion of the stewards or Commission, the trainer and all other persons shown to have had care or custody of such horse may be fined or suspended

or both. Under the provisions of this rule, the trainer is also responsible for any puncture mark on any horse he enters in a race, found by the stewards upon recommendation of the official veterinarian to evidence injection by syringe. If the trainer cannot be present on race day, he shall designate an assistant trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the stewards. Failure to fully disclose the actual trainer of a horse participating in an approved race shall be grounds to disqualify the horse, and subject the actual trainer to possible disciplinary action by the stewards or the Commission. Designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the assistant trainer under such absolute responsibility also. Willful failure on the part of the trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the stewards for further action.

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

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

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

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

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

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

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

10. Possession Of Contraband. No person other than a veterinarian or an animal technician licensed by the Commission shall have in his possession within the enclosure during sanctioned meetings any prohibited substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection except as provided in Subsection R52-7-8(1). No person shall have in his or her possession within the enclosure during any recognized meeting any device other than the ordinary whip which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

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

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

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

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

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

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

R52-7-12. Fire Prevention and Security.

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

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

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

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

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

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

R52-7-13. Drugs and Medication Exceptions and Illegal Practices.

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

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

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

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

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

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

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of $500.00; at concentrations above 10 ug/ml plasma: a fine of up to $1,000.00.

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

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

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

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

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

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

12. Horse Removed From Bleeders List. A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the

recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. Treatment Procedure. Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered by a Commission licensed veterinarian, using dosages pursuant to CHRB Rule No. 1845, section (e), (Effective 5/27/05), Authorized Bleeder Medication, which is hereby incorporated by reference. The bleeder medication is administered by the trainers veterinarian, and must be witnessed by the trainer or his designee upon their request. Administration of the bleeder medication must be reported in writing on a form designated by the Commission, to the track management no later than two hours prior to the scheduled post time of the last live race of the program.

14. Lasix Levels Permitted and Penalty. Any horse whose post race blood tests contains a level in excess of the levels set forth in CHRB Rule No. 1845, sections (b)-(c), (Effective 5/27/05), Authorized Bleeder Medication, hereby incorporated by reference, will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations.

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

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

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

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

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

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

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

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

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

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

C. The time administered.

D. The route of the administration.

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

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

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

KEY: horses, horse racing
June 23, 2016 **4-38-4**
Notice of Continuation August 25, 2016

R58. Agriculture and Food, Animal Industry.
R58-24. Community Spay and Neuter Grants.
R58-24-1. Authority and Purpose.

(1) This rule provides the requirements and procedures for community spay and neuter grants established by Title 4, Chapter 40 and defines what constitutes a person having low income for purposes of that statute.

(2) It is authorized by Section 4-40-102 (5)(c).

R58-24-2. Definitions.

The definitions as they appear in Section 4-40-102 (4) apply. In addition, "Department" means the Utah Department of Agriculture and Food.

R58-24-3. Grant Application.

An applicant responding to a request for grant application under this program shall submit its application as directed in the grant application guidance issued by the Department.

(1) An applicant with an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code shall submit an annual report for the organization as a whole which shall provide for the most current year end:

(a) IRS form 990 for non-profit corporation qualified under I.R.C. Section 501 (c)(3);

(b) a statement of assets, liabilities and fund balance;

(c) a statement of operations showing by summary, sources of revenue and expenditures;

(d) a statement of mission or purpose and how the organization has met its objectives; and

(e) a list of directors and key administrators who are in control of the organization.

(2) An applicant which operates as a city or county animal shelter shall submit:

(a) a statement of mission or purpose and how the organization has met its objectives; and

(b) a list of directors and key administrators who are in control of the organization.

R58-24-4. Criteria for Awarding Grants.

In awarding grants, the Department shall consider the extent to which the applicant:

(1) demonstrates that it meets organization criteria in Section 4-40-102 (4);

(2) demonstrates that it will provide spay and neuter services for cats and dogs belonging to a low-income person as required in Section 4-40-102 (4);

(3) provides:

(a) information that requirements established in Section 4-40-102 (5) are met;

(b) an organization operation plan with a statement of specific measurable objectives and methods to be used to assess the achievement of those objectives;

(c) a schedule of fees the voucher shall cover; and

(d) the number of estimated animal procedures to be provided with the grant award.

R58-24-5. Qualified Service Recipient.

(1) A low-income person qualifies under poverty standards established by the applicant organization using the 200 percent of federal poverty level standard. Acceptable proof may be any of the following:

(a) Medicaid enrollment documentation;

(b) CHIP enrollment documentation;

(c) Food Stamps eligibility documentation;

(d) WIC enrollment documentation;

(e) Social Security Disability (SSD);

(f) HUD Section 8 eligibility documentation; or

(g) prior year's income tax return.

(2) The grantee must assure that each individual to whom it provides service under the grant awarded under this rule meets the requirements of this rule and Section 4-40-102 (5).

(3) No funds shall be used for administration costs.

R58-24-6. Quarterly Payments.

Reimbursement of vouchers will occur quarterly.

R58-24-7. Annual Report Requirements.

(1) The grant recipient shall provide an annual report as provided in R58-24-3 above.

(2) The recipient organization shall provide supplementary information related to the spay and neuter services described in the grant application, including a break down of:

(a) the number of cats neutered or spayed and an estimated cost per animal; and

(b) the number of dogs neutered or spayed and an estimated cost per animal.

(3) An organization that receives state funds under Section 4-40-102 must submit to the Department of Agriculture and Food, Animal Industry, an annual accounting of the grant funds including:

(a) the number of vouchers distributed to pet owners for spay and neuter services;

(b) the number of vouchers redeemed for services;

(c) a summary of total cost of voucher services provided; and

(d) an average total procedure cost per animal.

R58-24-8. Audit Provisions.

An organization that receives state funds under Section 4-40-102 must submit, upon request, to a Department audit of the recipients' compliance with the terms of the grant.

KEY: spay, neuter, pets, grants
August 26, 2011 4-40-102(5)(c)
Notice of Continuation August 2, 2016

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

Promulgated under authority of Section 4-9-2.

R70-920-2. Adopted by Reference.

The Uniform Packaging and Labeling Regulation, published in the National Institute of Standards and Technology (NIST) Handbook 130, 2006 edition, is hereby adopted by the department, and incorporated by reference within this rule.

KEY: inspections
July 2, 1997 4-9-2
Notice of Continuation August 2, 2016

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

Promulgated under authority of Section 4-9-2.

R70-930-2. Adopted by Reference.

Except as modified by the department, the Uniform Regulation for the Method of Sale of Commodities as published in the National Institute of Standards and Technology (NIST) Handbook 130, 2006 edition, is hereby adopted by the department, and incorporated by reference within this rule.

R70-930-3. Modifications.

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

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

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

KEY: inspections
July 2, 1997 **4-9-2**
Notice of Continuation August 2, 2016

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

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

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

R70-940-2. Standards.

Motor fuels are to meet the following standards:

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

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

C. "Distillation." ASTM D-86 and ASTM revised D-4814 relative to alcohol blends (along with ASTM's Information Document on Oxygenated Fuels). Additionally, Gasoline and Gasoline-Ethanol Blends shall meet the following requirements:

(1) The most recent version of ASTM D 4814, "Standard Specification for Automotive Spark--Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall meet but not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes rules promulgated by the State, and Federally-approved State Implementation Plans (SIP's)). Gasoline blended with ethanol shall be blended under any of the following three options:

(a) The base gasoline used in such blends shall meet the requirements of ASTM D 4814 and shall have a minimum distillation temperature of 77 deg C (170 deg F) at 50 volume percent evaporated, or

(b) The base gasoline shall meet the requirements of ASTM D 4814 and the blend shall have a minimum distillation temperature of 66 deg C (150 deg F) at 50 volume percent evaporated, or

(c) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the requirements of ASTM D 4814, except for vapor pressure.

(2) Blends of gasoline containing 9-10 percent ethanol shall not exceed the ASTM D 4814 vapor pressure limits by more than 1.0 psi from June 1 through September 15 of each calendar year. Gasoline containing less than 9 percent ethanol by volume must comply with D4814 vapor pressure limits during the period. Gasoline containing up to 10 percent ethanol by volume shall not exceed the ASTM D 4814 vapor pressure limits by more than 1.0 psi from September 16 through May 31 of successive years.

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

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

F. "Corrosivity." ASTM D-4814.

G. "Benzene." ASTM D-3606.

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

I. "Gravity." ASTM D-1298.

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

K. "Aromatics." ASTM D-1319.

L. "Leads." ASTM D-3237.

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

N. "Conductivity." ASTM D-2624.

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

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

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

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

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

R70-940-3. Labels.

All motor fuel kept, offered or exposed for sale or sold containing at least one percent by volume ethanol must be labeled in a prominent, conspicuous manner," "This fuel contains up to 10% ETHANOL".

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

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

R70-940-4. Preparation.

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

R70-940-5. Water Content.

All storage tanks must be kept free from water content.

R70-940-6. Bill of Lading.

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

A. Name and address of the vendor and purchaser.

B. Date delivered.

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

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

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

R70-940-7. Blending.

A. Blending of motor fuels will be done only at facilities equipped to accurately measure the products to be blended. The finished blend must meet the requirements of octane, vapor pressure, distillation, and other standards as outlined by ASTM.

(1) The Department may issue a temporary approval for the blending of gasoline and ethanol provided that the operator has a Department-approved plan in place to assure the blended product meets the referenced requirements. The temporary approval shall not exceed 12 months.

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

R70-940-8. Fuel Shortage.

The Commissioner of Agriculture and Food may waive the standard in R70-940-2(C)for a county if there is sufficient evidence that a motor fuel shortage is imminent and the

standard is determined to be a primary cause.

KEY: inspections, motor fuel
December 23, 2010 4-33-4
Notice of Continuation August 2, 2016

R156. Commerce, Occupational and Professional Licensing.
R156-15. Health Facility Administrator Act Rule.
R156-15-101. Title.

This rule is known as the "Health Facility Administrator Act Rule".

R156-15-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 15, as used in this rule:

(1) "Administrator in training (AIT)" means an individual who is participating in a preceptorship with a licensed health facility administrator.

(2) "Board" means the Health Care Administrators Board.

(3) "Distance learning" means acquiring qualified professional education as referenced in Subsection R156-15-309(4) using technologies and other forms of learning, including internet, audio/visual recordings, mail or other correspondence.

(4) "General administration" as used in the definition of "administrator", Subsection 58-15-2(1), means that the administrator is responsible for operation of the health facility in accordance with all applicable laws regardless of whether the administrator is present full or part time in the facility or whether the administrator maintains an office inside or outside of the facility, but may not exceed responsibility for more than the number of licensed facilities in accordance with Utah Administrative Code R432-150 or R432-200.

(5) "General supervision" means general supervision as defined in Subsection R156-1-102a(4)(c).

(6) "Nursing home administrator" means a health facility administrator.

(7) "Preceptor" means a licensed health facility administrator meeting the qualifications of Subsection R156-15-307(2), who is responsible for the supervision and training of an AIT.

(8) "Preceptorship" means a formal training program approved by the Division in collaboration with the Board for an administrator in training (AIT), under the supervision of an approved licensed health facility administrator. The program is conducted in a licensed health facility.

(9) "Qualifying experience" means at least 8,000 hours of employment in a licensed health facility including hours in a supervisory role as referenced in Section R156-15-302c.

R156-15-103. 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 15.

R156-15-104. 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.

R156-15-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the application requirements for licensure in Section 58-15-4 are defined, clarified, or established as follows:

(1) Complete an approved AIT preceptorship consisting of a minimum of 1,000 hours.

(2) Meet either the education requirement in Section R156-15-302b or the experience requirement in Section R156-15-302c.

R156-15-302b. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the education requirement for licensure in Subsection 58-15-4(2) is defined, clarified, or established as follows:

(1) The applicant shall graduate from an accredited university or college with a minimum of a baccalaureate degree.

(2) Up to 500 hours spent in an internship, practicum, or outside study program associated with a bachelor's degree in health facility administration or health care administration may be included as part of an approved AIT preceptorship as outlined in Section R156-15-307.

R156-15-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-1-203(1)(b) and 58-1-301(3), the experience requirement for licensure in Subsection 58-15-4(2) is defined, clarified, or established as follows:

(1) The applicant shall complete at least 8,000 hours of qualifying experience approved by the Division in collaboration with the Board.

(2) At least 4,000 hours of the qualifying experience shall be in a supervisory role.

(3) Subsection (1) may include up to 500 hours of an approved AIT preceptorship as outlined in Section R156-15-307, and if in a supervisory role may be included as part of Subsection (2).

R156-15-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the examination requirement for licensure in Subsection 58-15-4(4) is defined, clarified, or established as follows:

(1) The National Association of Boards of Examiners for Nursing Home Administrators (NAB) examination is the qualifying examination required for licensure as a health facility administrator.

(2) The passing score on the NAB examination shall be a minimum scale score of 113.

R156-15-303. 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 15 is established by rule in Section R156-1-308a(1).

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

R156-15-307. AIT Preceptorship.

(1) A preceptor shall be allowed to supervise no more than two AIT preceptees at a time.

(2) In order to be approved as a preceptor, the health facility administrator shall:

(a) have been licensed for three years;

(b) be currently licensed and in good standing in Utah; and

(c)(i) be currently working in a licensed health facility; or

(ii) be currently working in an executive position related to a licensed health facility.

(3) The AIT preceptee shall at all times be under the general supervision of the preceptor.

(4) The AIT preceptee may work in the facility either full or part time while completing the preceptorship requirements. Credit received for an AIT preceptorship training shall be earned only for duties related to AIT preceptorship training as set forth under Subsection (5).

(5) An approved AIT preceptorship shall include the following:

(a) Patient care including:

(i) health maintenance;

(ii) social and psychological needs;

(iii) food service program;

(iv) medical care;

(v) recreational and therapeutic recreational activities;

(vi) medical records;

(vii) pharmaceutical program; and

(viii) rehabilitation program;

(b) Personnel management including:

(i) grievance procedures;

(ii) performance evaluation system;

(iii) job descriptions/performance standards;

(iv) interview and hiring procedures;

(v) training program;

(vi) personnel policies and procedures; and

(vii) employee health and safety program;

(c) Financial management including:

(i) developing a budget;

(ii) financial planning

(iii) cash management system; and

(iv) establishing accurate financial records;

(d) Marketing and public relations including

(i) planning and implementing a public relations program; and

(ii) planning and implementing an effective marketing program;

(e) Physical resource management including:

(i) ground and codes, building maintenance;

(ii) sanitation and housekeeping procedures;

(iii) compliance with fire and life safety codes;

(iv) security; and

(v) fire and disaster plan;

(f) Laws and regulatory codes including:

(i) knowledge of Medicaid and Medicare;

(ii) labor laws;

(iii) knowledge of building, fire and life safety codes;

(iv) OSHA/UOSHA;

(v) Bureau of Health Facility Licensure Law and Rule;

(vi) licensing and certification/professional licensing boards;

(vii) Health Facility Administrator Law and Rule;

(viii) tax laws; and

(ix) establishing or working with a governing board.

R156-15-308. License By Endorsement.

A license may be granted to an applicant in accordance with Section 58-1-302 and Subsection 58-15-4(6) who is:

(1) currently a licensed health facility administrator in good standing in another state; and

(2) meets the examination requirement as stated in Section R156-15-302d.

R156-15-309. Continuing Education.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses under Title 58, Chapter 15.

(2) During each two year period commencing on June 1 of each odd numbered year, a licensee shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice, of which no more than 10 hours shall be distance learning.

(3) The required number of hours of qualified professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a health facility administrator;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Education obtained from an accredited university or college in pursuit of an advanced degree may qualify as continuing education.

(6) Continuing professional education under the sponsorship of or approved by the licensing agency of Utah or another state may qualify as continuing education.

(7) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(8) Waiver from or an extension of time to complete continuing education shall be in accordance with Section R156-1-308d. A licensee who receives a waiver or extension may be excused from the requirement for a period of up to three years.

KEY: licensing, health facility administrators

May 8, 2014	**58-1-106(1)(a)**
Notice of Continuation August 25, 2016	**58-1-202(1)(a)**
	58-15-3(3)

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(40), 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

(i) 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); or

(ii) the work is limited to installation of passive radon gas controls on new construction in accordance with Appendix F of the International Residential Code.

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:

(i) 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); or

(ii) the work is limited to installation of passive radon

gas controls on new construction in accordance with Appendix F of the International Residential Code.

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.

A contractor who obtained this classification of licensure between January 1, 2009 and April 25, 2011 and who holds an active license may, in addition to the above, perform the following activities as part of the scope of practice under this subsection: fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

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 in a closed system not connected to the culinary water system. Notwithstanding the foregoing, where water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a contractor licensed under this subsection may connect the closed system to the backflow prevention device, which must be installed by an actively licensed plumber.

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. Work performed under this classification shall be 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).

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 plumbing contractor. 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, S352, 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;

(p) artificial turf installation;

(q) general cleanup of a construction site which does not include demolition or excavation; and

(r) work that would otherwise be limited to individuals holding the S260, S261, S262, S263, S290, S310, S330, S380, S420, S421 and S500 specialty classifications if the work is within the $1,000 or $3,000 labor and material limit as specified in the handyman exemption in Subsection 58-55-305(1)(h).

(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
S211 - Boiler Installation Contractor
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, two years of experience shall be lawfully performed within the 10-year period preceding the date of application under the general supervision of a contractor, 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) One year of work experience means 2000 hours.

(c) No more than 2000 hours of experience during any 12 month period may be claimed.

(d) Except as described in Subsection (2)b, 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.

(e) If the applicant's qualifying experience is outdated but has previously been approved in the state of Utah, a passing score on the trade examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) One of the required two years of experience shall be in a supervisory or managerial position.

(b) 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.

(c) 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 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.

(4) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

(5) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsection (1), 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 which provides coverage for the scope of work performed and 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(3).

(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-302f. Pre-licensure Education - Standards.

(1) Qualifier Education Requirement. The 20-hour pre-licensure education program required by Subsection 58-55-302(1)(e)(iii) shall be completed by the qualifier for a contractor applicant.

(2) Program Pre-Approval. A pre-licensure education provider shall submit an application for approval as a provider on the form provided by the Division. The applicant shall demonstrate compliance with Section R156-55a-302f.

(3) Eligible Providers. The following may be approved to provide pre-licensure education:

(a) a nationally or regionally recognized accredited college or university having a physical campus located within the State of Utah; or

(b) a non-profit Utah construction trades association involved in the construction trades in the State of Utah:

(i) representing multiple construction trade classifications;

(ii) with membership of:

(A) at least 250 contractors licensed in Utah; or

(B) less than 250 members, if the association is:

(I) competent, as determined by the Commission and the Director according to their sole discretion; and

(II) compliant with all other standards of this rule; and

(iii) having five years of experience providing education to contractors in Utah.

(4) Content. The 20-hour program shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

(a) ten hours of financial responsibility instruction that includes the following:

(i) record keeping and financial statements;

(ii) payroll, including:

(A) payroll taxes;

(B) worker compensation insurance requirements;

(C) unemployment insurance requirements;

(D) professional employer organization (employee leasing) alternatives;

(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;

(F) employee benefits; and

(G) Fair Labor Standard Act;

(iii) cash flow;

(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and

(iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(5) Program Schedule.

(a) A pre-licensure education provider shall offer programs at least 12 times per year.

(b) The pre-licensure education provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.

(6) Program Instruction Requirements: The pre-licensure education shall meet the following standards:

(a) Time. Each hour of pre-licensure education credit shall consist of 60 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the education time for which education credit is issued.

(b) Learning Objectives. The learning objectives of the pre-licensure education shall be reasonably and clearly stated.

(c) Teaching Methods. The pre-licensure education shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material and must be given a pass/fail grade.

(d) Faculty. The pre-licensure education shall be

prepared and presented by individuals who are qualified by education, training or experience.

(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure education requirements.

(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.

(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure education curriculum and study/resource guide for the pre-licensure education that must be pre-approved by the Commission and the Division prior to use by the provider.

(h) Live Broadcast. The pre-licensure education course may be taught by live broadcast if:

(i) the student and the instructor are able to see and hear each other; and

(ii) a representative of the provider is at any remote location to monitor registration and attendance at the course.

(7) Certificates of Completion. The pre-licensure education provider shall provide individuals completing the pre-licensure education a certificate that contains the following information:

(a) the date of the pre-licensure education;

(b) the name of the pre-licensure education provider;

(c) the attendee's name;

(d) verification of completion of the 20-hour requirement; and

(e) the signature of the pre-licensure education provider.

(8) Reporting of Program Completion. A pre-licensure education provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.

(9) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure education course for the purpose of evaluating the education and the instructor(s).

(10) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

(a) the dates of all pre-licensure education courses that have been completed;

(b) registration and attendance logs of individuals who completed the pre-licensure education;

(c) the name of instructors for each education course provided as a part of the program; and

(d) pre-licensure education handouts and materials.

(11) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure education provider, if the pre-licensure education provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.

(12) Exemptions. In accordance with Subsection 58-55-302(1)(e)(iii), the following persons are not required to complete the pre-licensure education program requirements:

(a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;

(b) a person holding an active and unrestricted Utah professional engineer license who is applying for the E100 contractor license classification; or

(c) a person who:

(i) is a qualifier on an active and unrestricted contractor license;

(ii) became the qualifier on the license on or before October 9, 2014; and

(iii) is applying to:

(A) add additional contractor classifications to the license; or

(B) become a qualifier on a new entity that is applying for initial licensure.

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. 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 minimum of three hours shall consist of live in-class attendance. The remaining three hours may consist of courses provided through distance learning.

(a) "Core continuing education" is defined as construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance and bookkeeping.

(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, 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 and business 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 be among those

specified in Subsection 58-55-302.5(2).

(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. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall track the following:

(i) the amount of time each student has spent in the course;

(ii) what activities the student did or did not access; and

(iii) all of the student's test scores.

(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, if offered by a provider specified in Subsection 58-55-302.5(2), 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, plumber's or elevator mechanic'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 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) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) 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(5), 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) and Section R156-55a-302d; and

(3) failing to within 30 days of a request from the Division to provide:

(a) proof of insurance coverage;

(b) a copy of the licensee's public insurance policy; or

(c) any exclusions included in the licensee's public insurance policy.

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

FIRST OFFENSE

Violation	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(22)	$ 500.00	N/A
58-55-501(23)	$ 500.00	N/A
58-55-501(24)	$ 500.00	N/A
58-55-501(25)	$ 500.00	N/A
58-55-501(26)	$ 500.00	N/A
58-55-501(27)	$ 500.00	N/A
58-55-501(28)	$ 500.00	N/A
58-55-501(29)	$ 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(22)	$1,000.00	N/A
58-55-501(23)	$1,000.00	N/A
58-55-501(24)	$1,000.00	N/A
58-55-501(25)	$1,000.00	N/A
58-55-501(26)	$1,000.00	N/A
58-55-501(27)	$1,000.00	N/A
58-55-501(28)	$1,000.00	N/A
58-55-501(29)	$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.

Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) 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, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) 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 under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be $50,000 for the E100 or B100 classification of licensure; $25,000 for the R100 classification of licensure; or $15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) 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 Subsection 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.

(7) 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 Subsection R156-55a-602(5) 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 Subsection 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
June 21, 2016 **58-1-106(1)(a)**
Notice of Continuation August 4, 2016 **58-1-202(1)(a)**
58-55-101
58-55-308(1)(a)
58-55-102(39)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Act Rule.
R156-55b-101. Title.

This rule is known as the "Electricians Licensing Act Rule".

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or this rule:

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as adopted in the State Construction Code Adoption Act and State Construction Code. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Immediate supervision", as used in Subsection 58-55-102(23) and this rule means that the apprentice and the supervising electrician are physically present on the same project or jobsite but are not required to be within sight of one another.

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

(4) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in residential dwellings of up to three stories and will include single and multi family dwellings.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

(6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

R156-55b-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.

R156-55b-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is described in Section R156-1-107.

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

R156-55b-302b. Qualifications for Licensure - Work Experience - Residential Journeyman and Journeyman Electricians.

(1) In order to satisfy Subsections 58-55-302(3)(h) and (i), an applicant for a license as a residential journeyman electrician or journeyman electrician shall document the following on-the-job work experience:

(a) Residential Journeyman Electrician:

(i) at least 600 hours in boxes and fittings, conduit, wireways and cableways and associated fittings;

(ii) at least 3000 hours in wire and cable, individual conductors and multi-conductors cables, and non-metallic sheathed cable;

(iii) at least 300 hours in distribution and utilization equipment, transformers, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motor and other distribution or utilization equipment; and

(iv) at least 300 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(b) Journeyman electrician:

(i) at least 4000 hours in raceways, boxes and fittings, conduit, wireways, cableways and other raceways and associated fittings, and non-metallic sheathed cable;

(ii) at least 800 hours in wire and cable, individual conductors and multi-conductor cables;

(iii) at least 400 hours in distribution and utilization equipment including transformers, panel boards, switchboards, control panels, disconnects, motor starters, lighting fixtures, heaters, appliances, motors and other distribution and utilization equipment; and

(iv) at least 400 hours in specialized work including grounding, wiring of systems for sound, data, communication, alarms, automated systems, generators, batteries and computer equipment.

(2) No more than 2000 hours of work experience may be credited for each 12 month period.

(3) No credit will be given for work experience performed illegally.

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.

(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.

(5) If an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.

R156-55b-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 55 is established by rule in Section R156-1-308a.

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

R156-55b-304. Continuing Education.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering the National Electrical Code as adopted or proposed for adoption.

(3) "Professional continuing education" is defined as education covering:

(a) National Fire Protection Association 70E (NFPA 70E), Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA);

(b) electrical motors and motor controls, electrical tool usage; and

(c) supervision skills related to the electrical trade.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used 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 electrical trade.

(c) Content. The content of the course shall be relevant to the practice of the electrical trade 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 may be recognized for continuing education that is provided through internet or home study courses provided that the course verifies registration and participation in the course by means of a passing 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 to individuals completing the course a certificate which 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;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(7) 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.

(8) 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 (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses 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.

(10) 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.

(11) 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.

(12) 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 which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which 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. The 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.

R156-55b-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

(1) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with Subsection 58-55-302(3)(j), Sections 58-55-501, 58-55-502, and R156-55b-501.

(2) For the purposes of Subsections 58-55-102(31), 58-55-302(3)(j) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same electrical contractor;

(b) the electrical contractor may contract with a licensed professional employer organization to employ such persons.

(3) An apprentice in the fourth through sixth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period. In the seventh and succeeding years of training, the nonsupervision provision no longer applies and the apprentice shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

R156-55b-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as a licensee to comply with the supervision requirements established by Subsection 58-55-302(3)(j).

(2) failing as a licensee to carry a copy of a current license at all times when performing electrical work;

(3) failing as an electrical contractor to certify an electrician's hours and breakdown of work experience by category when requested by an electrician who is or has been an employee; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55b-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties applicable under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

KEY: occupational licensing, licensing, contractors, electricians

August 21, 2014 **58-1-106(1)(a)**
Notice of Continuation August 8, 2016 **58-1-202(1)(a)**
58-55-308(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55c. Plumber Licensing Act Rule.
R156-55c-101. Title.

This rule is known as the "Plumber Licensing Act Rule".

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

(2) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) repair or replacement of the following residential type appliances:

(i) dishwashers;

(ii) refrigerators;

(iii) freezers;

(iv) ice makers;

(v) stoves;

(vi) ranges;

(vii) clothes washers; and

(viii) clothes dryers; and

(b) repair or replacement of other plumbing fixtures and appliances inside the occupied space of a structure, when the cost of the repair or replacement does not exceed $300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work.

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-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 55.

R156-55c-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.

R156-55c-302a. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):

(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.

(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;

(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iii) the hours shall include on the job training and instruction in nine of the 11 work process areas listed in Table I; and

(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.

TABLE I
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer and vent lines	2,000
C. Installation of hot and cold water for domestic purposes	1,400
D. Installation and setting of plumbing appliances and fixtures	1,200
E. Maintenance and repair of plumbing	600
F. General pipe work including process and industrial hours	600
G. Gas piping or service piping	400
H. Welding, soldering and brazing as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	100
J. Hydronics piping and equipment installation	300
K. Fire suppression system installation	100

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302a(4) and (6).

(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302a(5);

(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber;

(iv) the apprenticeship shall include on the job training and instruction in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the Division;

(ii) the experience shall be obtained while licensed as an apprentice plumber;

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in eight of the ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer and vent lines	1,600
C. Installation of hot and cold water for domestic purposes	1,200
D. Installation and setting of plumbing appliances and fixtures	800
E. Maintenance and repair of plumbing	600

F.	Gas piping or service piping	400
G.	Service and maintenance of gas controls and equipment	100
H.	Welding, soldering and brazing as it applies to the trade	100
I.	Hydronics piping and equipment installation	300
J.	Fire suppression system installation	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber, which shall include successful completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

R156-55c-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The applicant shall obtain a score of 70% on the Utah Plumbers Licensing Examination that shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a and R156-55c-302b; or

(b) the applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55c-302a(1)(a)(ii); and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55c-302a(1)(a)(i).

(3) (a) If an applicant fails one or more sections of the examination, the applicant shall retake any section of the examination failed.

(b) An applicant shall wait at least 25 days for the first two retakes and thereafter shall wait 120 days between retakes.

(4) If an applicant passes any section of the examination but does not pass the entire examination, the passing score on any section of the examination shall be valid for one year from the date the section of the examination was passed. Thereafter, the applicant shall retake any previously passed section of the examination that is no longer valid to support any subsequent application for licensure.

R156-55c-302c. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the immediate supervision of the applicant's employer; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302d(1).

(a) The degree shall be accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

(i) accounting;

(ii) apprenticeship;

(iii) business management;

(iv) communications;

(v) computer systems and computer information systems;

(vi) construction management;

(vii) engineering;

(viii) environmental technology;

(ix) finance;

(x) human resources; or

(xi) marketing.

R156-55c-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 55, is established by rule in Section R156-1-308a(1).

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

R156-55c-304. Continuing Education - Standards.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 12 hours of continuing education during each two year license term. A minimum of eight hours shall be core education. The remaining four hours may be professional education.

(2) "Core continuing education" is defined as education covering:

(a) International Building, Mechanical, Plumbing Codes and Utah building code amendments as adopted or proposed for adoption;

(b) the Americans with Disability Act;

(c) medical gas, National Fire Protection Association 13D and 54; and

(d) hydronics and waste water treatment.

(3) "Professional continuing education" is defined as education covering:

(a) energy conservation, management training, new technology, plan reading; and

(b) lien laws and Utah construction registry.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved education apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used 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 plumbing trade.

(c) Content. The content of the course shall be relevant to the practice of the plumbing trade 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 courses may be recognized for continuing education if the course verifies registration and participation in the course by means of a passing 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 to 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;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(7) 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.

(8) 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 (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses 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.

(10) 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.

(11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses that meet the standards set forth under this section.

(12) 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 which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which 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. The 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.

R156-55c-305. Licensure by Endorsement.

The Division may issue a license by endorsement in accordance with the provisions of Section 58-1-302.

R156-55c-401. Conduct of Apprentice and Supervising Plumber.

(1) The conduct of licensed apprentice plumbers and their licensed supervisors shall be in accordance with Subsections 58-55-302(3)(e), 58-55-501, 58-55-502 and R156-55c-501.

(2) For the purposes of Subsections 58-55-302(3)(e) and 58-55-501(12), one of the following shall apply:

(a) the supervisor and apprentice employees shall be employees of the same plumbing contractor; or

(b) the plumbing contractor may contract with a licensed professional employer organization to employ such persons.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to comply with the supervision requirements established by Subsection 58-55-302(3)(e);

(2) failing as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the Division or any law enforcement officer;

(3) failing as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor; and

(4) failing as a licensee to provide proof of completed continuing education within 30 days of the Division's request.

R156-55c-502. Administrative Penalties.

(1) The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rule are hereby adopted as the administrative penalties under this rule.

(2) The administrative penalty for a violation of Subsection 58-1-501(2)(o) under this rule shall be in accordance with Section R156-1-502.

KEY: occupational licensing, licensing, plumbers, plumbing

October 9, 2014 **58-1-106(1)(a)**
Notice of Continuation August 8, 2016 **58-1-202(1)(a)**
58-55-101

R156. Commerce, Occupational and Professional Licensing.

R156-71. Naturopathic Physician Practice Act Rule.

R156-71-101. Title.

This rule is known as the "Naturopathic Physician Practice Act Rule."

R156-71-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 71, as used in Title 58, Chapters 1 and 71, or this rule:

(1) "Approved clinical experience program" or "residency program" as used in Subsections 58-71-302(1)(e) and 58-71-304.2(1)(b), means a minimum 12 month program associated with a naturopathic medical school or college accredited by the Council of Naturopathic Medical Education.

(2) "Direct supervision" as used in Subsection 58-71-304.2(1)(b), means the supervising naturopathic physician, physician and surgeon, or osteopathic physician is responsible for the naturopathic activities and services performed by the naturopathic physician intern and is normally present in the facility and when not present in the facility is available by voice communication to direct and control the naturopathic activities and services performed by the naturopathic physician intern.

(3) "Direct and immediate supervision" of a medical naturopathic assistant ("assistant") as used in Subsections 58-71-102(6) and 58-71-305(7), means that the licensed naturopathic physician is responsible for the activities and services performed by the assistant and will be in the facility and immediately available for advice, direction and consultation.

(4) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(5) "Naturopathic physician intern" or "intern" means an individual who qualifies for a temporary license under Section 58-71-304.2 to engage in a naturopathic physician residency program recognized by the division under the direct supervision of an approved naturopathic physician, physician and surgeon, or osteopathic physician.

(6) "NPLEX" means the Naturopathic Physicians Licensing Examinations.

(7) "Primary health care", as referenced in Subsection 58-71-102(12), means basic or general health care provided at the patient's first contact with the naturopathic physician.

(8) "Qualified continuing education," as used in this rule, means continuing education that meets the standards set forth in Subsection R156-71-304.

(9) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 71, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-71-502.

R156-71-103. 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 71.

R156-71-104. 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.

R156-71-202. Naturopathic Physician Formulary.

(1) In accordance with Subsections 58-71-102(8) and (12)(a) and Section 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the primary health care of patients within the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by category, with reference numbers identified in the American Hospital Formulary Service (AHFS), published by the American Society of Health System Pharmacists, 2008 edition; including the monographs available on AHFS Drug Information website, which is http://www.ahfsdruginformation.com:

4:00 Antihistamines

8:08 Antihelminthics

8:12 Antibacterials, limited to oral, topical and intramuscular administration

8:14 Antifungals, oral and topical forms

8:16.92 Miscellaneous Antimycobacterials

8:18 Antivirals limited to oral and topical dosage forms, excluding:

8:18:08 Antiretrovirals

8:18:20 Interferons

8:18:24 Monoclonal Antibodies

8:18:32 Nucleosides and Nucleotides

8:30.04 Amebicides

8:30.92 Miscellaneous Antiprotozoals excluding those whose primary indication is the treatment of infection in immunosuppressed patients (i.e. Pentamidine and Trimetrexate)

8:36 Urinary anti-infectives

12:12.08.12 Selective Beta 2 Adrenergic Agonists

12:12.12 Alpha and Beta Adrenergic Agonists

12:16 Sympatholytic (Adrenergic Blocking) Agents, limited to ergot derivatives

12:20 Skeletal Muscle Relaxants, excluding scheduled medications

20:12.04.16 Heparins

20:24 Hemorrheologic Agents

24:04.08 Cardiotonic Agents - limited to Digoxin

24:06 Antilipemic Agents

24:08 Hypotensive Agents - limited to oral dosage forms

24:20 Alpha Adrenergic Blocking Agents

24:24 Beta Adrenergic Blocking Agents - limited to oral dosage forms

24:28 Calcium Channel Blocking Agents - limited to oral dosage forms

24:32 Renin-Angiotensive-Aldosterone System Inhibitors - limited to oral dosage forms

28:08 Analgesics and Antipyretics, excluding scheduled medications

28:16.04.16 Selective Serotonin - and Norepinephrine-Reuptake Inhibitors

28:16.04.20 Selective-Serotonin Reuptake Inhibitors

28:16.04.24 Serotonin Modulators

28:16.04.28 Tricyclics and Other Norepinephrine-Reuptake Inhibitors

28:16.04.92 Antidepressants, Miscellaneous

40:00 Electrolytic, Caloric, and Water Balance

40:28 Diuretics

44:00 Enzymes, limited to digestive and proteolytic

48:10.24 Leukotriene Modifiers

48:10.32 Mast-Cell Stabilizers

48:16 Expectorants

52:08 Corticosteroids (oral, topical, and injectable), Anti-Inflammatory Agents and DMARDS

52:24 Mydriatics

56:22 Antiemetics

56:28 H2 Blockers, Anti-ulcer Agents and Acid Suppressants

56:36 Anti-inflammatory Agents

64:00 Heavy Metal Antagonists, limited to Dimercaprol, Edetate Calcium Disodium and Succimer

68:12 Contraceptives, except implants and injections
68:16.04 Estrogens
68:18 Gonadotropins; limited to Gonadotropin, Chorionic
68:20.02 Alpha-Glucosidase Inhibitors
68:20.04 Biguanides
68:20.08 Insulins
68:20.20 Sulfonylureas
68:24 Parathyroid
68:32 Progestins
68:36 Thyroid and Antithyroid Agents, including Thyroid of glandular extract
72:00 Local Anesthetics
76:00 Oxytocics, limited to Oxytocin
80:00 Serums, Toxoids, Vaccines
84:00 Skin and Mucous Membrane Agents, excluding Depigmenting and Pigmenting Agents (reference number 84:50)
84:92 Skin and Mucous Membrane Agents, Miscellaneous, excluding Isotretinoin
88:00 Vitamins
92:00 Miscellaneous Therapeutic Agents, limited to Antigout, and Bone-Resorption Inhibitors (limited to Raloxifene), and Botulinum Toxin type A (limited to superficial injections)

(2) In addition, the following items or substances, although not listed in Subsection (1), are approved for primary health care:
(a) Amino Acids;
(b) Minerals;
(c) Oxygen;
(d) Silver Nitrate;
(e) DHEA (dihydroepiandrosterone);
(f) Pregnenolone; and
(g) Allergy Testing Agents.

(3) In accordance with Subsections 58-71-102(8) and (12)(a) and Section 58-71-202, the naturopathic physician formulary includes a single controlled substance with the reference number identified in the AHFS, published by the American Society of Health System Pharmacists, 2008 edition:
68:08 Testosterone.

(4) New categories or classes of drugs will need to be approved as part of the formulary prior to prescribing/administering.

(5) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

R156-71-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-71-302(1)(f) and (2)(c), the licensing examination sequence required for licensure is as follows:

(1) NPLEX Basic Science Series, the State of Washington Basic Science Series or the State of Oregon Basic Science Series;
(2) NPLEX Clinical Series; and
(3) NPLEX Minor Surgery.

R156-71-302a. Qualifications for Licensure - Education Requirements for Graduates of Naturopathic Physician Programs or Schools Located Outside the United States.

The satisfactory documentation of compliance with the licensure requirement set forth in Subsection 58-71-302(2)(b) shall be a report submitted to the Division by the International Credentialing Associates, Inc. (ICA) confirming that the applicant's naturopathic physician program or school has met the accreditation standards.

R156-71-303. 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 71 is established by rule in Section R156-1-308a(1).

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

R156-71-304. Qualified Continuing Education.

(1) To be qualified continuing education, a continuing education course shall meet the following standards:

(a) the course shall consist of clinically oriented seminars, lectures, conferences, workshops, mediated instruction, or programmed learning provided by one of the following:

(i) a professional health care licensing agency, hospital, or institution accredited by the Accreditation Council of Continuing Medical Education (ACCME);

(ii) a program sponsored by the American Council of Pharmaceutical Education (ACPE);

(iii) an accredited college or university;

(iv) a professional association or organization representing a licensed profession whose program objectives are related to naturopathic training; or

(v) any other provider providing a program related to naturopathic education, if the provider has submitted an application to and received approval from the Utah Naturopathic Physicians Licensing Board;

(b) the learning objectives of the course shall be reasonably and clearly stated;

(c) the teaching methods shall be clearly stated and appropriate;

(d) the faculty shall be qualified both in experience and in teaching expertise;

(e) there shall be a written post course or program evaluation;

(f) the documentation of attendance shall be provided; and

(g) the content of the course shall be relevant to naturopathic practice and consistent with the laws and rules of this state.

(2) In accordance with Section 58-71-304, qualified continuing education shall consist of 48 hours of qualified continuing professional education in each preceding two year period of licensure, 20 hours of which shall be specific to pharmacy or pharmacology as it pertains to the Naturopathic Physician Formulary, Section R156-71-202. A minimum of ten of the 20 hours of continuing education specific to pharmacy or pharmacology must be recognized as category 1 credit hours as established by the ACCME in each preceding two year licensure cycle. No more than 20 hours of continuing education in each two-year period of licensure may be through distance learning.

(3) If a licensee allows his license to expire and the application for reinstatement is received by the division within two years after the expiration date the applicant shall:

(a) submit documentation of having completed 48 hours of qualified continuing professional education required for the previous renewal period. The required hours shall meet the criteria set forth in Subsection (2); and

(b) submit documentation of having completed a pro rata amount of qualified continuing professional education based upon one hour of qualified continuing professional education for each month the license was expired for the current renewal period.

(4) If the application for reinstatement is received by the division more than two years after the date the license expired, the applicant shall complete a minimum of 48 hours of qualified continuing professional education and additional

hours as determined by the board to clearly demonstrate the applicant is currently competent to engage in naturopathic medicine. The required hours shall meet the criteria set forth in Subsection (2).

(5) Audits of a licensee's continuing education hours may be done on a random basis by the division in collaboration with the board.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of two years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain this information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) The division in collaboration with the board may grant a waiver of continuing education requirements to a waiver applicant who documents he is engaged in full time activities or is subjected to circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section. A waiver may be granted for a period of up to four years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-71-502. Unprofessional Conduct.

"Unprofessional conduct" includes failure to comply with the approved formulary.

KEY: licensing, naturopaths, naturopathic physician
April 21, 2015 58-71-101
Notice of Continuation August 25, 2016 58-1-106(1)(a)
58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.
R162-2g-101. Authority.

(1) The authority to promulgate rules governing the appraisal industry is granted by Section 61-2g-201(2)(h).

(2) The authority to establish and collect fees is granted by Section 61-2g-202(1).

(3) The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2g-205(5)(c) within certain limitations as imposed by Section 61-2g-403(1)(c).

R162-2g-102. Definitions.

(1) "Affiliation" means an ongoing business association:

(a) between:

(i) two individuals registered, licensed, or certified under Section 61-2g; or

(ii) an individual registered, licensed, or certified under Section 61-2g and:

(A) an appraisal entity; or

(B) a government agency;

(b) for the purpose of providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AQB" stands for the Appraiser Qualifications Board of the Appraisal Foundation.

(3) "Board" means the Utah Real Estate Appraiser Licensing and Certification Board.

(4) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

(5) The acronym "CAMA" stands for Computer Assisted Mass Appraisal.

(6) "Classification" means the type of license or certification held by an appraiser.

(7) "Day" means calendar day unless specified as "business day."

(8) "Deferral" means the postponement or delay for completion of a continuing education requirement due to active military duty or due to the impacts of a state- or federally-declared disaster as specified in R162-2g-306a.

(9) "Desk review" means review of an appraisal:

(a) including verification of the data; but

(b) not including a physical inspection of the property.

(10) "Distance education" means an education process based on the geographical separation of student and instructor, including:

(a) computer conferencing;

(b) satellite teleconferencing;

(c) interactive audio;

(d) interactive computer software;

(e) Internet-based instruction; and

(f) other interactive online courses.

(11) "Division" means the Division of Real Estate of the Department of Commerce.

(12) "Draft report" means an appraisal report that is distributed prior to being completed, as provided in Subsection R162-2g-502b(1).

(13) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a sole proprietorship;

(d) a limited liability company;

(e) another business entity; or

(f) a subsidiary or unit of an entity described in this Subsection (13).

(14) "Field review" means review of an appraisal, including:

(a) a physical inspection of the property; and

(b) verification of the data.

(15) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to R162-2g-307d(4).

(16) "Person" means an individual or an entity.

(17) "Reinstatement" means renewing a license or certification for an additional period after its expiration date has passed, but prior to 12 months after the expiration date.

(18) The acronym "RELMS" stands for Real Estate Licensing and Management System, which is the online database through which individuals registered, licensed, or certified under these rules must submit certain information to the division.

(19) "Renewal" means reissuing a license or certification upon its expiration for an additional period.

(20) "School" means:

(a) an accredited college, university, junior college, or community college;

(b) any state or federal agency or commission;

(c) a nationally recognized real estate appraisal or real estate related organization, society, institute, or association; or

(d) any school or organization approved by the board.

(21) "School director" means an authorized individual in charge of the educational program at a school.

(22) "Supervisory Appraiser" means a state-certified residential appraiser or a state certified general appraiser that directly supervises a trainee.

(23) "Trainee" means a person who is working under the direct supervision of a state-certified residential appraiser or a state-certified general appraiser to earn experience hours for licensure, and who meets the requirements of Subsection R162-2g-302.

(24) "Transaction value" means:

(a) for loans or other extensions of credit, the amount of the loan or extension of credit;

(b) for sales, leases, purchases, and investments in, or exchanges of, real property, the market value of the real property interest involved; and

(c) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(25) The acronym "USPAP" stands for the current edition of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.

R162-2g-302. Application for Trainee Registration.

(1) Registration required.

(a) An individual who intends to obtain a license to practice as a state-licensed appraiser shall first register with the division as a trainee.

(b) The division and the board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not registered as a trainee.

(2) Character. An individual registering with the division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for:

(i) a felony that resulted in:

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation,

theft, or dishonesty that resulted in:
(A) a conviction occurring within three years of the date of application; or
(B) a jail or prison release date falling within three years of the date of application.
(b) A trainee applicant may be denied registration upon consideration of the following:
(i) criminal convictions and pleas entered at any time prior to the date of application;
(ii) the circumstances that led to any criminal convictions or pleas under consideration;
(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the appraisal business;
(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;
(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
(vi) court findings of fraudulent or deceitful activity in civil lawsuits;
(vii) evidence of non-compliance with court orders or conditions of sentencing;
(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and
(ix) failure to pay taxes or child support obligations.
(3) Competency. An individual registering with the division as a trainee shall evidence competency. In evaluating an applicant for competency, the division and board may consider any evidence, including the following:
(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;
(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
(c) the extent and quality of the applicant's training and education in appraisal;
(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;
(e) evidence of disregard for licensing laws;
(f) evidence of drug or alcohol dependency; and
(g) the amount of time that has passed since any incident under consideration.
(4) Pre-licensing education.
(a) Within the five-year period preceding the date of application, an applicant shall successfully complete 75 classroom hours:
(i) approved by the AQB; and
(ii)(A) certified by the division pursuant to Subsection R162-2g-307c(1)-(3); or
(B) not required to be certified by the division pursuant to Subsection R162-2g-307c(6).
(b) The 75 hours of required education shall include:
(i) 30 hours of appraisal principles;
(ii) 30 hours of appraisal procedures; and
(iii) the 15-hour National USPAP course, or its equivalent.
(c) The15-hour National USPAP Course or its equivalent may not be accepted by the division as qualifying education unless it is:
(i) taught by an instructor who:
(A) is a state-certified residential or state-certified general appraiser; and
(B) has been certified by the AQB; or
(ii) approved as a distance education course by the AQB and International Distance Education Certification Center.
(d) A person who applies for trainee registration on or after January 1, 2015 shall successfully complete the division-approved Supervisory Appraiser and Appraiser Trainee Course:
(i) as taught by a division-approved instructor; and
(ii) within the two-year period preceding the date of application.
(e) Examination. An applicant shall evidence having passed the final examination in all pre-licensing courses.
(5) Application to the division. An applicant shall submit the following to the division:
(a) a completed application as provided by the division;
(b) course completion certificates for the 75 hours of pre-licensing education;
(c)(i) two fingerprint cards in a form acceptable to the division; or
(ii) evidence that the applicant's fingerprints have been successfully scanned at a testing center;
(d) all court documents related to any past criminal proceeding;
(e) complete documentation of any sanction taken against any license in any jurisdiction;
(f) a signed letter of waiver authorizing the division to:
(i) obtain the fingerprints of the applicant;
(ii) review past and present employment records;
(iii) review education records; and
(iv) conduct a criminal background check;
(g) the fee for the criminal background check;
(h) the name of the state-certified appraiser(s) with whom the trainee is affiliated;
(i) the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and
(j) the nonrefundable application fee.
(6) Affiliation with certified appraiser(s). Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:
(a) identifying each supervising certified appraiser on a form supplied by the division; and
(b) obtaining each supervising certified appraiser's signature on the application.

R162-2g-304a. Application to Sit for the State-Licensed Appraiser Exam.
(1) An applicant to sit for the state-licensed appraiser exam shall provide the following to the division:
(a) completed experience forms, as required by the division:
(i) documenting all experience hours completed by the applicant from the date of trainee registration to the date of application for licensure; and
(ii) evidencing at least 2,000 hours of appraisal experience:
(A) pursuant to Subsection R162-2g-304d;
(B) completed during the time when the applicant was registered with the division as a trainee; and
(C) accrued in no fewer than:
(i) 12 months for applicants submitting experience primarily from Appendices 1 and 2, or
(ii) 24 months for applicants submitting experience primarily from appendix 3;
(b) evidence of having successfully completed 30 semester hours of college-level education from an accredited:
(i) college;
(ii) junior college;
(iii) community college; or
(iv) university;
(c) evidence of having successfully completed a state-licensed appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and
(d) a nonrefundable application fee.
(2) Applicants holding an Associate degree, or higher, from an accredited college, junior college, community

college, or university satisfy the 30-hour college-level requirement.

(3) The pre-licensing curriculum required by Subsection (1)(b) shall be conducted by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(4)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (4)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-certified residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 2,500 hours of total appraisal experience, at least 500 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) 24 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendices 1 and 2; or

(B) 36 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendix 3;

(b) evidence of having received a Bachelor's degree or higher from an accredited college or university:

(c) evidence of having successfully completed a state-certified residential appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection(1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, all of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) 30 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendices 1 and 2, or

(B) 42 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendix 3;

(b) evidence of having received a bachelor's degree or higher degree from an accredited college or university;

(c) evidence of having successfully completed a state-certified general appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (5)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsections (1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser who, within six months of renewing the license, meets the requirements for certification and files a completed application shall pay a transfer fee rather than an application fee.

(b) A certification that is obtained under this Subsection (4)(a) shall expire on the same date that the license was due to expire prior to transfer.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(v) personal property appraisals; or

(vi) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2:

(i) appraisals where only an exterior inspection of the subject property is performed shall be granted 90% of the credit awarded an appraisal that includes an interior inspection of the subject property; and

(ii) no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 250 experience hours may be earned from appraisal of vacant land.

(f) Appraisals on commercial or multi-unit form reports shall be awarded 75% of the credit normally awarded for the appraisal.

(g) Experience gained for work without a traditional client may qualify for experience hours but cannot exceed 50% of the total experience requirement. Work without a traditional client includes the following:

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB Course Approval Program and, if the course is taught in Utah either live or by distance education, also approved by the division.

(h) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) A registered trainee may not claim experience hours for any appraisal work performed after January 1, 2015 unless the trainee and the trainee's supervisor(s) have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course prior to performing the work to be claimed.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(J) The applicant may claim up to 100% of the total hours allowed for the tasks listed in this Subsection(A) through (I).

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) measurement of the exterior of a property that is the subject of an appraisal; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 100 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report; or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of

the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standard 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals:

(A) conforming to USPAP Standards 1 and 2; and

(B) including the following property types:

(I) vacant property;

(II) two- to four-unit dwelling;

(III) non-complex single-family unit; and

(IV) complex single-family unit; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2.

(e) No more than 60% of the total hours submitted for licensure or certification may be earned from any combination of appraisal assignments related to:

(i) property improvement inspection;

(ii) land segregation (division);

(iii) CAMA data entry; and

(iv) sale ratio study.

(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.

(iv) Mass appraisal of property with no real property component shall be awarded no credit.

(g) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards Rule 3 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

(A) preliminary valuation estimates;

(B) range of value estimates or similar studies;

(C) other real estate-related experience gained by:

(I) bankers;

(II) builders;

(III) city planners and managers; or

(IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-304e. Experience Review Committee.

(1) The board may appoint a committee to review the experience claimed by applicants for licensure or certification.

(2) The committee shall:

(a) review each application for completion of the experience hours required for licensure or certification;

(b) correspond with applicants concerning submissions, if necessary; and

(c) make recommendations to the division and the board for licensure or certification approval or disapproval.

(3) The committee shall be composed of appraisers selected from among the following categories:

(a) residential appraisers;

(b) commercial appraisers;

(c) farm and ranch appraisers;

(d) right-of-way appraisers; and

(e) mass appraisers.

(4) The chairperson of the committee shall be appointed by the board.

(5) Meetings may be called upon:

(a) the request of the chairperson; or

(b) the written request of a quorum of committee members.

(6) If the board denies the application on the recommendation of an experience review committee member, the applicant may, within thirty days after the denial, make a written request for board review of the applicant's experience, stating specific grounds upon which relief is requested. The board shall thereafter consider the request and issue a written decision.

R162-2g-304f. Final Application for Licensure or Certification.

(1) Within 90 days after successfully completing the exam for licensure or certification, the applicant shall return to the division:

(a) a report from the testing service indicating successful completion of the exam within 24 months of the date on which the applicant obtains authorization to sit for the exam;

(b) an application form as required by the division and including:

(i) the applicant's business, home, and e-mail addresses;

(ii) the name and business address of any appraisal entity or government agency with which the applicant is affiliated; and

(iii) if the applicant is applying for certification, the fee for the federal registry.

(2)(a) A post office box without a street address is unacceptable as a business or home address.

(b) An applicant may designate any address to be used as a mailing address.

R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this Subsection R162-2g-306a before the expiration date printed on the registration, license, or certificate.

(b) It shall be grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is required to be registered, licensed, or certified.

(2)(a) To timely renew a registration, license, or certification, an applicant shall, prior to the expiration date of the registration, license, or certification, submit to the division:

(i) a completed renewal application as provided by the division;

(ii)(A) evidence that the continuing education requirements listed in this Subsection (2)(b) have been completed; or

(B) evidence sufficient to enable the Division, in its sole discretion, to determine that a deferral of continuing education is appropriate due to the applicant's having been currently or recently:

(I) assigned to active military duty; or

(II) impacted by a state- or federally-declared natural disaster; and

(iii) the applicable non-refundable renewal fee.

(b) The continuing education required under this Subsection (2)(a)(ii)(A) shall be completed during the two-year period preceding the date of application and shall include:

(i)(A) the 7-hour National USPAP Update Course, taught by an instructor or instructors, at least one of whom is a state-certified appraiser in good standing and is USPAP certified by the AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry at the time the courses are taught (see Appendix 4, Table 2 for a list of continuing education topics); or

(II) not required to be certified, pursuant to Subsection R162-2g-307d(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought.

(iii) An appraiser may earn continuing education credit for attendance at one meeting of the Board in each continuing education two-year cycle provided:

(A) the meeting is open to the public;

(B) the meeting is a minimum of two hours in length;

(C) the total credit for attendance at the meeting is limited to a maximum of seven hours; and

(D) the division verifies attendance to ensure that the appraiser attends the meeting for the required period of time.

(c)(i) A trainee who registered with the division prior to January 1, 2015 shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A registered trainee may count the Supervisory Appraiser and Appraiser Trainee course toward the

continuing education requirement of this Subsection (2)(b)(ii)(A) during any renewal cycle in which the trainee completes the course.

(d)(i) An appraiser who supervises a trainee identified in Subsection (2)(c)(i) shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A supervising appraiser may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of Subsection (2)(b)(ii)(A) during any renewal cycle in which the appraiser completes the course.

(3)(a) In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with this Subsection (3)(a), but whose credits are not banked by the education provider pursuant to Subsection R162-2g-502a(5)(c), may obtain credit for the course(s) taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of this Subsection (2).

(5)(a) After the 30-day period described in this Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in this Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education as approved by the division.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:

(A) reapply with the division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under this Subsection (4)(c)(i) shall receive credit for previously credited pre-licensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and

(B) it was either:

(I) completed after January 1, 2008; or

(II) certified by the division and the AQB prior to January 1, 2008, as approved, qualified pre-licensing education.

(6) If the division receives renewal documents in a timely manner, but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

(7) Renewal after deferment of continuing education due to active military service or the impacts of a state- or federally-declared disaster.

(a) An appraiser or trainee who is unable to complete the continuing education requirements to renew a registration, license, or certification due to active military service or because the individual has been impacted by a state- or federally-declared disaster may:

(i) submit a timely application for renewal pursuant to Subsection (2)(a)(ii)(B); and

(ii) request that the application for renewal be conditionally approved, with the expiration date of the applicant's registration, license, or certification extended pursuant to this Subsection (7)(b), pending the completion of the continuing education requirement.

(b) Upon the division's approving a deferral of continuing education, the expiration date of the applicant's registration, license, or certification shall be extended 90 days, during which time the applicant shall:

(i) complete the continuing education required for the renewal; and

(ii) submit proof of the continuing education to the division.

R162-2g-306b. Notification of Changes.

(1) An individual registered, licensed, or certified under these rules shall notify the division of any status change, including the following:

(a) creation or termination of an affiliation, except as provided in this Subsection (2);

(b) change of name; and

(c) change of business, home, mailing, or e-mail address.

(2) An individual is not required to report the creation or termination of an affiliation that:

(a) facilitates a single transaction; and

(b) is not part of an ongoing business association.

(3) Notification procedure.

(a) To report a change of name, an individual shall complete a paper change form and attach to it official documentation such as a:

(i) marriage certificate;

(ii) divorce decree; or

(iii) driver license.

(b)(i) To report a change in affiliation or address, and individual shall complete and submit an electronic change form through RELMS.

(ii) A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

(c) All change forms shall be accompanied by a nonrefundable processing fee.

(4) Deadlines and effective dates.

(a)(i) An individual shall comply with the notification requirements outlined in this Subsection R162-2g-306b within ten business days of making a status change.

(ii) If a deadline for notification falls on a day when the division is closed, the deadline shall be extended to the next business day.

(b) Status changes are effective on the date the properly executed forms and appropriate fees are received by the division.

R162-2g-307a. General Education Criteria Applicable to All Pre-Licensing Education and Continuing Education.

(1) A class hour is 60 minutes of which at least 50 minutes are instruction attended by the student.

(2) The prescribed number of class hours includes time for examinations.

(3) Experience may not be substituted for education, and education may not be substituted for experience.

R162-2g-307b. School Certification.

(1) Application. A school requesting certification shall:

(a) submit an application form as prescribed by the division, including:

(i) name, telephone number, email address, and address of:

(A) the school;

(B) the school director; and

(C) all owners of the school; and

(ii) as to each school director or owner, disclosure of criminal history and adverse regulatory actions;

(b) provide a description of:

(i) the type of school; and

(ii) the school's physical facilities;

(c) provide a statement outlining the:

(i) number of quizzes and examinations in each course offered;

(ii) grading system, including methods of testing and standards of grading;

(iii) requirements for attendance; and

(iv) school's refund policy.

(2) Standards for operation.

(a) All courses shall be taught in an appropriate classroom facility and not in a private residence, except for a course approved for distance education.

(b) A school shall teach the approved course of study as outlined in the state-approved outline.

(c) At the time of registration, a school shall provide to each student:

(i) the statement described in this Subsection (1)(c);

(ii) a copy of the qualifying questionnaire that the student will be required by the division to answer as part of the pre-licensing or precertification examination; and

(iii) a criminal history disclosure statement.

(d) A school shall require each student to attend 100% of the scheduled class time in order to earn credit for the course.

(e)(i) A school may not award credit to any student who fails the final examination.

(ii) A student who fails a school final examination must wait three days before retesting and may not retake the same final examination.

(iii) A student who fails a final examination a second time must wait two weeks before retesting and may not retake either exam that the student previously failed.

(iv) A student who fails a final exam a third time shall fail the course.

(f) A school may not allow a student to challenge a course or any part of a course by taking an exam in lieu of attendance.

(g) Credit hours.

(i) For a course that is taught outside of a college or university setting, one credit hour may be awarded for 50 minutes of instruction within a 60-minute period, allowing for a ten-minute break.

(ii) For a course that is taught in a college or university setting:

(A) one quarter hour is equivalent to 10 credit hours; and

(B) one semester hour is equivalent to 15 credit hours.

(iii) A school may not award more than eight credit hours per day per student.

(3) A school shall report to the division within 10 calendar days of:

(a) any change in the information provided pursuant to this Subsection (1)(a)(i); and

(b) a school director or owner being convicted, or entering a plea in abeyance or diversion agreement, as to a criminal offense, excluding class C misdemeanors.

(4)(a) A school certification is valid for two years from the date of issuance.

(b) To renew a school certification, an individual shall, prior to the date of expiration:

(i) submit a properly completed application as provided by the division; and

(ii) pay a nonrefundable applicable fee.

R162-2g-307c. Pre-licensing Course Certification.

(1) To certify a pre-licensing course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) a course outline, including:

(i) a description of the course;

(ii) the length of time to be spent on each subject area, broken into segments of no more than 30 minutes each; and

(iii) three to five learning objectives for every three hours;

(b) a description of any method of instruction that will be used other than lecture method, including:

(i) webinar;

(ii) satellite broadcast; or

(iii) other form of distance education;

(c) copies of at least three final examinations administered in the course and the answer keys that will be used to determine if a student passes the course;

(d) the school procedure for maintaining the security of the final exams and answer keys;

(e) the titles, authors, and publishers of all required textbooks;

(f)(i) the instructor(s) who will teach each class; and

(ii) evidence that each instructor is:

(A) certified by the division;

(B) qualified to serve as a guest lecturer; or

(C) a college or university faculty member who has academic training or appraisal experience satisfactory to the division and the board;

(g) a nonrefundable applicable fee; and

(h) a signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) name and license number of each student receiving education credit.

(2) Standards for approval of traditional classroom courses. Each course shall:

(a) meet the minimum standards set forth in the state-approved course outline governing the course, including minimum hourly requirements;

(b) be approved through the AQB course approval program;

(c) allow a maximum of 10% of the required class time for testing, including review test and final examination;

(d) use texts, workbooks, supplement pamphlets, and other materials that are appropriate and current in their application to the required course outline.

(3) Standards for approval of distance education

(a) A distance education course shall:

(i) comply with this Subsection (2);

(ii) provide interaction between the student and instructor;

(iii) include a written examination personally proctored by an official approved by the presenting entity;

(iv) meet the course delivery requirements established by the AQB and the International Distance Education Certification Center; and

(v) offer at least 15 credit hours.

(b) A distance education course offered by a college or

university may be deemed acceptable to meet the credit hour requirement if the course content is approved by:

(i) the AQB;

(ii) a state licensing jurisdiction; or

(iii) a college or university that:

(A) offers distance education programs in other disciplines; and

(B) is approved or accredited by:

(I) the Commission on Colleges;

(II) a regional or national accreditation association; or

(III) an accrediting agency that is recognized by the United States Secretary of Education.

(4) Within 10 business days after the occurrence of any material change in a course that could affect approval, the school shall give the division written notice of the change.

(5) A course certification is valid for no more than 24 months.

(6) Credit for non-certified pre-licensing education.

(a) Division certification is not required for a pre-licensing course that is offered by a school, as defined in Subsection R162-2g-102(17) as long as:

(i) the course content:

(A) meets the minimum standards set forth in the Utah state-approved course outline; and

(B) is approved by the AQB course approval program;

(ii) the course provides at least 15 credit hours, including examination(s);

(iii) a closed-book, closed-note final examination is administered at the end of each course;

(iv) students are not allowed to earn credit from the course provider by challenge examination without first attending the course;

(v) credit is not awarded for duplicate or highly comparable classes;

(vi) where multiple classes are offered, they represent a progression in a student's knowledge; and

(vii) in order to receive credit, a student is required to:

(A) attend 100% of the scheduled class hours;

(B) complete all required exercises and assignments; and

(C) pass the course final examination.

(b) Hourly credit for a course taken from a professional appraisal organization shall be granted according to the division approved list.

(c) An applicant who wishes to be awarded credit for non-certified pre-licensing education shall:

(i) provide to the division a list of the cours(es) taken, including:

(A) course title(s);

(B) name(s) of the sponsoring organization(s);

(C) number of classroom hours completed;

(D) date(s) of course completion; and

(E) evidence that the cours(es) meet the requirements of:

(I) the AQB; and

(II) if distance education, the International Distance Education Certification Center;

(ii) request review of the course by the division and board;

(iii) establish that the criteria outlined in this Subsection (6)(a) are met;

(iv) attest on a notarized affidavit that the courses have been completed as documented; and

(v) if requested by the division, provide proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

(7) Supervisory Appraiser and Appraiser Trainee Course. In order to obtain certification of the supervisory appraiser and appraiser trainee course, a course provider shall:

(a) comply with this Subsection (1); and

(b) sign a written attestation agreeing to provide a paper copy of the course manual to each attendee.

R162-2g-307d. Continuing Education Course Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is certified prior to its being taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be traditional education or distance education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of all materials that will be distributed to the participants;

(j) the procedure for pre-registration;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of all students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

(2) Standards for approval.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines; and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(viii) course certification number and expiration date;

(ix) credit hours awarded; and

(x) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) Non-certified continuing education credit. Except as provided in Subsection R162-2f-307d(1), the board may award continuing education credit on a case-by-case basis for the following:

(a) up to one-half of an individual's continuing education credit requirement for:

(i) participation, other than as a student, in appraisal educational processes and programs; or

(ii) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education;

(b) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:

(i) practicum course under this Subsection (3)(a); or

(ii) course under this Subsection (3)(b); and

(c) completion of any course that:

(i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and

(ii) is taught outside the state of Utah.

R162-2g-307e. Instructor Certification for Pre-licensing Education.

(1) To certify as a pre-licensing education instructor, an individual shall:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

(b) submit a completed application as provided by the division;

(c) demonstrate knowledge of the subject matter to be taught as evidenced by:

(i) current, active licensure or certification as applicable to the pre-licensing course proposed to be taught;

(ii) a minimum of five years active experience in appraising; and

(iii)(A) college or other appropriate courses specific to the topic proposed to be taught; or

(B) other experience acceptable to the board in the topic proposed to be taught;

(d) if the individual proposes to teach a course in USPAP, evidence that the individual is an AQB-certified USPAP instructor; and

(e) pay a nonrefundable application fee.

(2) A pre-licensing instructor certification is valid for 24 months from the date of issuance.

(3) To renew a pre-licensing instructor certification, an individual shall:

(a) submit a completed application, as provided by the division;

(b) evidence having taught at least 20 hours of in-class instruction in certified course(s) during the preceding term of certification;

(c) evidence having attended a real estate instructor development workshop sponsored or approved by the division during the preceding two years; and

(d) pay a nonrefundable application fee.

(4)(a) To reinstate an expired pre-licensing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with this Subsection (3); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired pre-licensing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with this Subsection (3);

(ii) pay a nonrefundable reinstatement fee; and

(iii) submit proof of having completed six classroom hours of education related to real estate appraisal or teaching techniques.

(c) After a pre-licensing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

(5) A certified instructor shall comply with the reporting requirements of Section 61-2g-306(3).

R162-2g-307f. Instructor Certification for Continuing Education.

(1) A continuing education course that is required to be certified shall be taught by a certified instructor.

(2) To obtain a continuing education instructor certification, and individual shall, at least 30 days prior to the date on which instruction is proposed to begin:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

(b) submit a completed application form, as provided by the division;

(c) evidence:

(i) at least three years of full-time experience in the course subject;

(ii) college-level education related to the course subject; or

(iii) a combination of experience and education acceptable to the division;

(d) evidence:

(i) at least 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at the division's Instructor Development Workshop;

(e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(f) provide a signed statement agreeing not to market personal sales products;

(g) provide any other information the division requires; and

(h) pay a nonrefundable application fee.

(3) A continuing education instructor certification is valid for two years.

(4) To renew a continuing education instructor certification, an individual shall, prior to the date of expiration:

(a) submit a completed renewal application, as provided by the division;

(b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or

(ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and

(c) pay a nonrefundable renewal fee.

(5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable reinstatement fee;

(c) After a continuing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

R162-2g-308. Application for a Six-Month Temporary Permit.

(1) A non-resident of this state who is licensed or certified in another state and who wishes to apply for a six-month temporary permit to perform one or more specific appraisal assignments in Utah shall:

(a) evidence that each specific appraisal assignment is covered by a contract to provide appraisals;

(b) submit an application as provided by the division and including the following:

(i) name of the client;

(ii) specific property address(es) to be appraised;

(iii) type(s) of property being appraised; and

(iv) estimated time to complete each assignment;

(c) complete and submit a qualifying questionnaire as provided by the division;

(d) sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any non-criminal proceeding arising out of the applicant's practice as an appraiser in this state;

(e) pay a nonrefundable application fee in the amount established by the division; and

(f) provide the starting date of the appraisal assignment for which the temporary permit is being sought.

(2)(a) A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six-month period if the assignment(s) for which the permit is issued have not been completed within the original six-month term of the temporary permit.

(b) A temporary permit may be extended by submitting the forms required by the division.

R162-2g-310. Application for Licensure or Certification Through Reciprocity.

An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

(1) The applicant shall provide evidence that:

(a) the state in which the applicant is licensed requires appraisal pre-licensing education that is:

(i) approved by that state; and

(ii) substantially equivalent in number to the hours required for the license or certification for which the applicant is applying in Utah;

(b) the applicant's pre-licensing education included either:

(i) the 15-hour National USPAP Course; or

(ii) equivalent education as determined through the course approval program of the AQB; and

(c) the applicant has passed an examination that has been approved by the AQB for the license or certification for which the applicant is applying.

(2) The applicant shall:

(a) obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder; and

(b) sign an attestation that the applicant understands and will abide by both the statute and the rules.

(3) If the applicant resides outside of the state of Utah, the applicant shall sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any noncriminal proceeding arising out of the applicant's practice as an appraiser in this state.

(4) The board may not issue a license or certification to an applicant who has been convicted of a criminal offense involving moral turpitude relating to the applicant's ability to provide services as an appraiser.

R162-2g-311. Scope of Authority.

(1) Trainees.

(a) An individual who has properly qualified as a trainee pursuant to Subsection R162-2g-302 may perform appraisal-related duties within the competence and scope of authority of the state-certified supervisory appraiser as follows:

(i) participating in property inspections;

(ii) measuring or assisting in the measurement of properties;

(iii) performing appraisal-related calculations;

(iv) participating in the selection of comparables for an appraisal assignment;

(v) making adjustments to comparables; and

(vi) drafting or assisting in the drafting of an appraisal report.

(b) The trainee may have more than one supervisory appraiser.

(c) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in this Subsection (1)(a), within the following limitations:

(i) As to the trainee's first 100 inspections of residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(ii) As to the trainee's first 20 inspections of non-residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified general appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(d) A trainee may not:

(i) solicit or accept an assignment on behalf of anyone other than:

(A) the trainee's supervisor; or

(B) the supervisor's appraisal firm;

(ii) sign an appraisal report or discuss an appraisal assignment with anyone other than:

(A) the appraiser responsible for the assignment;

(B) state enforcement agencies;

(C) third parties as may be authorized by due process of law; and

(D) a duly authorized professional peer review

committee.

(e) The following are not subject to the scope of authority limitations of this Subsection (1):

(i) full-time elected county assessors; and

(ii) any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll.

(2) State-licensed appraisers. In a federally-related transaction, state-licensed appraisers may appraise:

(a) non-complex one- to four-residential units having a transaction value of less than $1,000,000;

(b) complex one- to four- residential units having a transaction value of less than $250,000; and

(c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

(3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:

(a) subdivisions for which:

(i) a development analysis/appraisal is necessary; or

(ii) a discounted cash flow analysis is required by the terms of the assignment; and

(b) vacant land if the highest and best use of the land is for five or more one- to four-family units.

R162-2g-502a. Standards of Conduct and Practice.

(1) Affirmative duties in general. A person registered, licensed, or certified by the division shall:

(a) if employing an unlicensed assistant who is not registered as a trainee pursuant to Subsection R162-2g-302:

(i) actively supervise the unlicensed assistant; and

(ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b)(i) except as provided in this Subsection (2)(a), comply with the current edition of USPAP; and

(ii) observe the advisory opinions of USPAP;

(c) in order to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to this Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), property owner, or other verifiable source(s);

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of all appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:

(i) of a complaint against the individual; or

(ii) that information is needed from the individual.

(2) Exceptions.

(a) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(i) a division staff member or employee;

(ii) a member of the experience review committee as appointed and approved by the board;

(iii) a member of the technical review panel as appointed and approved by the board;

(iv) a hearing officer;

(v) a member of a county board of equalization;

(vi) an administrative law judge;

(vii) a member of the Utah State Tax Commission; or

(viii) a member of the board.

(b) If a deadline for response under this Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.

(3) A trainee shall:

(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and

(b) include in each log the following information for each appraisal:

(i) file number;

(ii) report date;

(iii) subject address;

(iv) client name;

(v) type of property;

(vi) report form number or type;

(vii) number of work hours;

(viii) description of work performed by the trainee; and

(ix) scope of the review and supervision of the supervising appraiser.

(4)(a) A supervisory appraiser shall delegate to a trainee only such duties as the trainee is authorized to perform under Subsection R162-2g-311(1).

(b) A supervisory appraiser shall directly train and supervise the trainee in the performance of assigned duties by:

(i) critically observing and directing all aspects of the appraisal process;

(ii) accepting full responsibility for the appraisal and the contents of the appraisal report by signing and certifying the appraisal complies with USPAP; and

(iii) reviewing and signing the trainee appraisal reports.

(c) A supervisory appraiser shall personally inspect:

(i) each property that is appraised with a trainee until the supervisory appraiser determines the trainee is competent to inspect the property in accordance with the competency rule of USPAP for the property type, and the trainee has performed at least:

(A) 100 residential inspections as provided in Subsection R162-2g-311(1)(b)(i); and

(B) 20 non-residential inspections as provided in

Subsection R162-2g-311(1)(b)(ii); and

(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.

(d) A supervisory appraiser shall be state-certified and in good standing with the division for a period of at least three years prior to being eligible to become a supervisory appraiser.

(e) An appraiser may not act as a supervisory appraiser if the appraiser has been subject to a disciplinary action in any jurisdiction:

(i) within the three year period preceding the date on which the appraiser proposes to act as a supervisor; and

(ii) where the supervisory appraiser's legal eligibility to engage in the appraisal practice was impacted or impaired.

(f) A supervisory appraiser subject to a disciplinary action will be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.

(g) A supervisory appraiser shall comply with the competency rule of USPAP for the property type and geographic location for which the trainee appraiser is being supervised.

(h) Although a trainee is permitted to have more than one supervisory appraiser, a supervisory appraiser may not supervise more than three trainees at one time, unless a division program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.

(i) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee. It is the responsibility of both the supervisory appraiser and the trainee to ensure the experience log is accurate, current, and complies with division requirements.

(5) A school shall:

(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;

(b) display the certification number of all continuing education courses in advertising and marketing;

(c) as to each student who provides the school with an accurate name or license number, bank course completion information:

(i) within 10 days after the end of a course offering; and

(ii) to the database specified by the division;

(d) upon request of the division, substantiate any claim made in advertising or marketing;

(e) within 15 calendar days of any material change in the information outlined in R162-2g-307b(1), provide to the division written notice of the change;

(f) with regard to the criminal history disclosure required under R162-2g-307b(2)(c)(iii):

(i) obtain each student's signature before allowing the student to participate in course instruction;

(ii) retain each signed criminal history disclosure for a minimum of two years; and

(iii) make any signed criminal history disclosure available to the division upon request;

(g) maintain a high quality of instruction;

(h) adhere to all state laws and administrative rules regarding school and instructor certification;

(i) provide the instructor(s) for each course with the required course content outline;

(j) require instructors to adhere to the approved course content;

(k) comply with a division request for information within 10 business days of the date of the request; and

(l) verify that the material is current in any course taught on:

(i) Utah statutes;

(ii) Utah administrative rules;

(iii) Federal laws; and

(iv) Federal regulations.

(6) An instructor shall adhere to the approved outline for any course taught.

R162-2g-502b. Prohibited Conduct.

(1) An individual registered, licensed, or certified by the division may not:

(a) release to a client a draft report of a one- to four-unit residential real property;

(b) release to a client a draft report of a property other than a one- to four-unit residential real property unless:

(i) the first page of the report prominently identifies the report as a draft;

(ii) the draft report is signed by the appraiser; and

(iii) the appraiser complies with USPAP in the preparation of the draft report;

(c) affix a signature to an appraisal report by means of a signature stamp; or

(d) sign a blank or partially completed appraisal report that will be completed by anyone other than the appraiser who has signed the report;

(e) sign an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property; or

(f) split appraisal fees with any person who is not a state-licensed or state-certified appraiser, except that a supervising appraiser may pay a trainee reasonable compensation proportionate to the lawful services actually performed by the trainee in connection with appraisals.

(2) A trainee may not:

(a) solicit a client to address an engagement letter directly to the trainee; or

(b) accept payment for appraisal services from anyone other than:

(i) the trainee's supervisor; or

(ii) an appraisal or government entity with which the trainee is affiliated.

(3) A supervising appraiser may not:

(a) sign a report that is completed in response to an engagement letter that is addressed to a trainee;

(b) sign an appraisal report as the supervising appraiser without having given adequate supervision to the trainee, appraiser, or assistant being supervised.

(4) A state-licensed appraiser may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

(5) A school may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession;

(iii) disparage a competitor's services or methods of operation;

(iv) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank;

(c) accept payment from a student without first providing to that student the information outlined in R162-2g-307b(2)(c);

(d) continue to operate after the expiration date of the school certification without renewing;

(e) continue to offer a course after its expiration date without renewing;

(f) allow an instructor whose instructor certification has expired to continue teaching;

(g) allow an individual student to earn more than eight credit hours of education in a single day;

(h) award credit to a student who has not complied with the minimum attendance requirements;

(i) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(j) give valuable consideration to a person licensed with or certified by the division under Section 61-2g for referring students to the school;

(k) accept valuable consideration from a person licensed with or certified by the division under Section 61-2g for referring students to a licensed or certified appraiser; or

(l) require a student to attend any program organized for the purpose of solicitation.

(6) A continuing education provider may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession; or

(iii) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) continue to offer a course after its expiration date without renewing;

(c) allow an instructor whose instructor certification has expired to continue teaching;

(d) allow an individual student to earn more than eight credit hours of education in a single day;

(e) award credit to a student who has not complied with the minimum attendance requirements; or

(f) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course.

(7) An instructor may not:

(a) continue to teach any course after the course has expired and without renewing the course certification; or

(b) continue to teach any course after the individual's certification has expired and without renewing the instructor certification.

R162-2g-504. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Appraiser Licensing and Certification Act or by these rules.

(3)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2g-501 and 502 against a trainee or an appraiser; and

(iv) an appeal from an automatic revocation under Section 61-2g-302(2)(d), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application:

(i) that is denied by the division on the grounds that the instructor's attestation to upstanding moral character is false;

(ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and

(iii) for a temporary permit that is denied by the division for any reason.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of a trainee registration or an appraiser license or certification by the division;

(ii) the issuance or renewal of an appraisal course, school, or instructor certification;

(iii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iv) the denial of renewal or reinstatement of a trainee registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and

(v) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules.

(4)(a) Request for agency action. The following applications shall be deemed a request for agency action:

(i) registration as a trainee;

(ii) licensure or certification as an appraiser;

(iii) certification of a course, school, or instructor; and

(iv) issuance of a temporary permit.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against a trainee, an appraiser, or the holder of a temporary permit requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(5) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in this Subsection (6)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2g-504, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an

administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division pursuant to Subsection R162-2g-306b.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(6) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (6)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(iv)(A) The presiding officer, upon a determination of good cause, may require a respondent to file a witness and exhibit list.

(B) Failure to comply with a requirement to file a witness and exhibit list may result in the exclusion of any witness or exhibit not disclosed.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2g-601. Appendices.

Appendix 1. Residential Experience Hours Schedule. The hours shown in the following schedule shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

TABLE

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade:	
(i) living area less than 4,000 square feet, including a site	Up to 10 hours (Expected avg hrs 7.5)
Part 1	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5
(ii) living area 4,000 square feet or more, including a site	Up to 10 hours
Part 2	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(b) multiple one-unit dwellings in the same subdivision or condominium project, which dwellings are substantially similar:	
(i) 1-25 dwellings	7 hours per dwelling, up to a maximum of 42 hours
(ii) over 25 dwellings	70 hours maximum
(c) two to four-unit dwelling	
Part 3	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0

Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form	Up to 10 hours
(e) residential lot, 1-4 unit	Up to 7 hours

Part 4

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(f) multiple lots in the same subdivision, which lots are substantially similar	
(i) 1-25 lots	5 hours per lot, up to a maximum of 30 hours
(ii) Over 25 lots	50 hours maximum
(g) small parcel of less than 20 acres	up to 6.5 hours

Part 5

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(h) vacant land, 20-640 acres	20-40 hours, per board decision
(i) recreational, farm, or timber acreage suitable for a house site:	
(i) up to 10 acres	10 hours
(ii) 10 acres or more	15 hours
(j) all other unusual structures or acreage which are much larger or more complex than typical properties	5-35 hours, per board decision
(k) review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	10-50 hours

Appendix 2. General Experience Hours Schedule. All appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal reports. Experience hours listed in this schedule may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the appraiser experience log submitted by the applicant, and if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

TABLE

Property Type	Hours that may be earned
(a) Apartment buildings:	
(i) 5-100 units	40 hours
(ii) over 100 units	50 hours
(b) hotel or motels:	
(i) 50 units or fewer	30 hours
(ii) 51-150 units	40 hours
(iii) over 150 units	50 hours
(c) nursing home, rest home, care facilities:	
(i) fewer than 80 beds	40 hours
(ii) 80 beds or more	50 hours
(d) industrial or warehouse building:	
(i) smaller than 20,000 square feet	30 hours
(ii) 20,000 square feet or more, single tenant	40 hours
(iii) 20,000 square feet or more, multiple tenants	50 hours
(e) office buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(f) entire condominium projects, using income approach to value:	
(i) 5- to 30-unit project	30 hours
(ii) 31- or more-unit project	50 hours
(g) retail buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(h) commercial, multi-unit, industrial, or other nonresidential use acreage:	
(i) 1 to less than 100 acres	20-40 hours
(ii) 100 acres or more, income approach to value	50-60 hours
(i) all other unusual structures or assignments that are much larger or more complex than the properties described in (a) to (h) herein.	5 to 100 hours per board decision
(j) entire subdivisions or planned unit developments (PUDs):	
(i) 1- to 25-unit subdivision or PUD	30 hours
(ii) over 25-unit subdivision or PUD	50 hours
(k) feasibility or market analysis	5 to 100 hours, each per board decision, up to a maximum of 500 hours

(l) farm and ranch appraisals:	Narrative	Form
(i) irrigated cropland, pasture other than rangeland:		
(A) 1 to less than 11 acres	10 hrs	15 hrs
(B)11-less than 40 acres	12.5 hrs	20 hrs
(C)40-less than 160 acres	15 hrs	25 hrs
(D)160-less than 1280 acres	25 hrs	40 hrs
(E) 1280 acres or more	40 hrs	50 hrs
(ii) dry farm:		
(A) 1 to less than 1280 acres	15 hrs	25 hrs
(B) 1280 acres or more	20 hrs	40 hrs
(m) Improvements on properties other than a rural residence, maximum 10 hours:		
(i) dwelling	5 hrs	5 hrs
(ii) shed	2.5 hrs	2.5 hrs
(n) cattle ranches		
(i) 0-200 head	15 hrs	20 hrs
(ii) 201-500 head	25 hrs	30 hrs
(iii) 501-1000 head	30 hrs	40 hrs
(iv) more than 1000 head	40 hrs	50 hrs
(o) sheep ranches		
(i) 0-2000 head	25 hrs	30 hrs
(ii) more than 2000 head	35 hrs	45 hrs
(p) dairy, including all improvements except a dwelling		
(i) 0-100 head	20 hrs	25 hrs
(ii) 101-300 head	25 hrs	30 hrs
(iii) more than 300 head	30 hrs	35 hrs
(q) orchards		
(i) up to 50 acres	30 hrs	40 hrs
(ii) more than 50 acres	40 hrs	50 hrs
(r) rangeland/timber		
(i) 0-640 acres	20 hrs	25 hrs
(ii) more than 640 acres	30 hrs	35 hrs
(s) poultry		
(i) 0-100,000 birds	30 hrs	40 hrs
(ii) more than 100,000 birds	40 hrs	50 hrs
(t) mink		
(i) 0-5000 cages	30 hrs	35 hrs
(ii) more than 5000 cages	40 hrs	50 hrs
(u) fish farm	40 hrs	50 hrs
(v) hog farm	40 hrs	50 hrs
(w) review of appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies	20-100 hours	

Appendix 3. Mass Appraisal Experience Hours Schedule.

TABLE

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade living area less than 4,000 square feet:	
Part 1	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5
(b) one-unit dwelling, above-grade living area area 4,000 square feet or more:	
Part 2	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(c) two to four unit dwelling:	
Part 3	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(d) commercial and industrial buildings, depending on complexity:	
Part 4	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5-4.5
Interior Inspection	0.5-9.5
CAMA Data Input and Review	0.5
Market Conditions	1.5
Land Value Estimate	2.0
Improvement Cost Estimate	2.0
Income Value Estimate	2-15
Sales Comparison Value Estimate	2-15
Final Reconciliation	0.5
Appraisal Report Preparation	1-10
Restricted Appraisal Report Preparation	0.5
(e) agricultural and other improvements, depending on complexity:	
Part 5	
Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Exterior Inspection	0.25-0.5
Interior Inspection	0.5-1
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5-1
Improvement Cost Estimate	0.5-1
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(f) vacant land, depending on complexity:	
Part 6	
Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Site Inspection	0.25
Land Segregation	0.25
CAMA Data Input and Review	0.5
Inspection	0.25-2.25
Market Conditions	0.75
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(g) land valuation guideline (development):	
(i) 25 or fewer parcels	10 hours
(ii) 26 to 500 parcels	30 hours
(iii) over 500 parcels	25 additional hours for each 500 parcels, up to a maximum of 125 hours for each guideline
(h)land valuation guideline (update):	
(i) 25 or fewer parcels	1 hour
(ii) 26 to 500 parcels	3 hours
(iii) over 500 parcels	2.5 additional hours for each 500 parcels, up to a maximum of 12.5 hours for each guideline
(i) assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation:	
(i) base study of 100 reviewed sales	125 hours
(ii) additional increments of 100 sales	25 additional hours for each 100 additional sales, up to a maximum of 375 hours for each study
(j) multiple regression model, development and implementation:	
(i) fewer than 5,000 parcels	100 hours
(ii) additional increments of 500 parcels	5 additional hours for each additional 500 parcels, up to a maximum of 375 hours for each regression model
(k) industry depreciation study and analysis	5 to 40 hours
(l) reviews of "land value in use" in accordance with U.C.A. Section 59-2-505:	
(i)office review only	0.25 hours
(ii) field review	0.5 hours
(m) natural resource properties, depending on complexity:	
(i) sand and gravel	1-20 hours per site
(ii) mine	1-110 hours
(iii) oil and gas	1-50 hours per site
(n) pipelines and gas distribution properties, depending on complexity	10-40 hours

(o) telephone and electrics properties, depending on complexity	5-80 hours
(p) airline and railroad properties, depending on complexity	10-80 hours
(q) appraisal review/audit, depending on complexity	2.5-125 hours
(r) capitalization rate study	10 to 100 hours
(s) mineral pricing study	10 to 100 hours
(t) effective tax rate study	10 to 100 hours
(u) Ad valorem centrally assessed property tax appeal preparation	5 to 125 hours

Appendix 4. Appraiser Education.

TABLE 1

Required Core Curriculum

Trainee Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Trainee Appraiser Education Requirements	75 Total Hours
Licensed Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Licensed Residential Education Requirements	150 Total Hours
Certified Residential	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Statistics, Modeling and Finance	15 Hours
Advanced Residential Applications and Case Studies	15 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	20 Hours
Certified Residential Education Requirements	200 Total Hours
Certified General*	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
*General Appraiser Market Analysis and Highest and Best Use	30 Hours
Statistics, Modeling and Finance	15 Hours
*General Sales Comparison and Income Approaches	30 Hours
*General Appraiser Site Valuation and Cost Approach	30 Hours
General Appraiser Income Approach	60 Hours
*General Appraiser Report Writing and Case Studies	30 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	30 Hours
Certified General Education Requirements	300 Total Hours

*The four Certified General courses identified with an asterisk * may substitute for the equivalent four Licensed Appraiser or Certified Residential courses when a candidate provides proof of completion of these courses when applying for a Licensed or Certified Residential appraisal credential.

TABLE 2

Continuing Education Topics (Division Certification Required)

(1) Ad valorem taxation
(2) Arbitration, dispute resolution
(3) Courses related to the practice of real estate appraisal or consulting
(4) Development cost estimating
(5) Ethics and standards of professional practice, USPAP
(6) Land use planning, zoning
(7) Management, leasing, timesharing
(8) Property development, partial interests
(9) Real estate law, easements, and legal interests
(10) Real estate litigation, damages, condemnation
(11) Real estate financing and investment
(12) Real estate appraisal related computer applications
(13) Real estate securities and syndication
(14) Developing opinions of real property value in appraisals that also include personal property and/or business value
(15) Seller concessions and impact on value
(16) Energy efficient items and "green building" appraisals

KEY: real estate appraisals, school certification, instructor certification

October 22, 2015 61-2g-201(2)(h)
Notice of Continuation August 18, 2016 61-2g-202(1)
61-2g-205(5)(c)
61-2g-307(3)
61-2g-401(5)

R270. Crime Victim Reparations, Administration.
R270-6. Recusal of a Board Member for a Conflict of Interest.
R270-6-1. Authority.

This rule is authorized by Section 63M-7-506.

R270-6-2. Purpose.

The purpose of this rule is to establish standards and procedures for addressing potential conflicts of interest.

R270-6-3. Definitions.

Terms used in this rule are defined in Section 63M-7-502.

R270-6-4. Potential Conflicts of Interest.

A board member has a potential conflict of interest with respect to a matter to be considered by the board if:

(1) the board member's participation would be prohibited under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act;

(2) the board member's participation constitutes a violation of constitutional due process under the Utah or United States constitutions; or

(3) the board member has a pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome.

R270-6-5. Procedures.

(1) A board member, who has a potential conflict of interest with respect to a matter before the board, shall:

(a) disclose the conflict of interest on a form provided by the Office;

(b) refrain from directly or indirectly influencing the board's decision on the specific issue which gave rise to the conflict of interest; and

(c) recuse himself or herself from voting with the board on the matter.

(2) This rule does not preclude a board member from participating in a general discussion as a subject matter expert.

KEY: conflict of interest, Crime Victim Reparations and Assistance Board
August 22, 2016 **67-16**
63M-7-506

R277. Education, Administration.
R277-100. Definitions for Utah State Board of Education (Board) Rules.
R277-100-1. Authority and Purpose.

(1) This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board and by Section 53A-1-401 which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

R277-100-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Audit" means an independent appraisal activity established by the Board as a control system to examine and evaluate the adequacy and effectiveness of internal control systems within an agency.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and rule.

(5) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(6) "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

(7) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(8) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(9)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(10)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(11) "Parent" means a parent or guardian who has established residency of a child under Sections 53A-2-201, 53A-2-202, or 53A-2-207 or another applicable Utah guardianship provision.

(12) "Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(13) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53A-1a-501.5.

(14) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

(15) "USDB" means the Utah Schools for the Deaf and the Blind.

(16) "USOR" means the Utah State Office of Rehabilitation.

KEY: Board of Education, rules, definitions
August 11, 2016 **Art X Sec 3**
53A-1-401

R277. Education, Administration.
R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions.
R277-210-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish definitions for terms in UPPAC activities.

(3) The definitions contained in this rule apply to Rules R277-210 through R277-216.

(b) Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-210-2. Definitions.

(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(b) "Action" does not include a disciplinary letter.

(c) "Action" includes:

(i) a letter of reprimand;

(ii) probation;

(iii) suspension; and

(iv) revocation.

(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.

(3) "Alcohol related offense" means:

(a) driving under the influence;

(b) alcohol-related reckless driving or impaired driving;

(c) intoxication;

(d) driving with an open container;

(e) unlawful sale or supply of alcohol;

(f) unlawful permitting of consumption of alcohol by minors;

(g) driving in violation of an alcohol or interlock restriction; and

(h) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3)(a) through (g).

(4) "Allegation of misconduct" means a written report alleging that an educator:

(a) has engaged in unprofessional or criminal conduct;

(b) is unfit for duty;

(c) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or

(d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

(5) "Answer" means a written response to a complaint filed by the Executive Secretary alleging educator misconduct.

(6) "Applicant" means a person seeking:

(a) a new license;

(b) reinstatement of an expired, surrendered, suspended, or revoked license; or

(c) clearance of a criminal background review from Executive Secretary at any stage of the licensing process.

(7) "Boundary violation" means the same as that term is defined in Rule R277-515.

(8) "Chair" means the Chair of UPPAC.

(9) "Complaint" means a written allegation or charge against an educator filed by the Executive Secretary against the educator.

(10) "Complainant" means the Executive Secretary.

(11) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the Superintendent and maintained on all licensed Utah educators.

(12) "Conflict of interest" means the same as that term is defined in Rule R277-101.

(13)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(b) "Conviction" includes:

(i) a finding of guilty by a judge or jury;

(ii) a guilty or no contest plea;

(iii) a plea in abeyance; and

(iv) for purposes of this rule, a conviction that has been expunged.

(14) "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

(a) a charge revealed by a criminal background check;

(b) a charge revealed by a hit as a result of ongoing monitoring; or

(c) an educator or applicant's self-disclosure.

(15)(a) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

(b) "Disciplinary letter" includes:

(i) a letter of admonishment;

(ii) a letter of warning; and

(iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this section.

(16) "Drug" means controlled substance as defined in Section 58-37-2.

(17) "Drug related offense" means any criminal offense under:

(a) Title 58, Chapter 37;

(b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(c) Title 58, Chapter 37b, Imitation Controlled Substances Act;

(d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(f) Title 58, Chapter 37e, Drug Dealer's Liability Act.

Sections 58-37 through 37e.

(18) "Educator Misconduct" means:

(a) unprofessional or criminal conduct;

(b) conduct that renders an educator unfit for duty; or

(c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

(19) "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

(a) Executive Secretary;

(b) Chair;

(c) Vice-Chair; and

(d) one member of UPPAC at large.

(20) "Executive Secretary" means:

(a) an employee of the Board who:

(i) is appointed by the Superintendent to serve as the UPPAC Director; and

(ii) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302; or

(b) the Executive Secretary's designee.

(21) "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory

self-reporting under Section R277-516-3.

(22) "Expedited Hearing Panel" means a panel of the following three members:

(a) the Executive Secretary;

(b) a voting member of UPPAC; and

(c) a UPPAC attorney.

(23) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

(24) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

(25) "Hearing officer" means a licensed attorney who:

(a) is experienced in matters relating to administrative procedures;

(b) is appointed by the Executive Secretary to manage the proceedings of a hearing;

(c) is not an acting member of UPPAC;

(d) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and

(e) does not have a vote as to the recommended disposition of a case.

(26) "Hearing panel" means a panel of three or more individuals designated to:

(a) hear evidence presented at a hearing;

(b) make a recommendation to UPPAC as to disposition; and

(c) collaborate with the hearing officer in preparing a hearing report.

(27) "Hearing report" means a report that:

(a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

(b) includes:

(i) a recommended disposition;

(ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

(iii) applicable law and rule.

(28) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

(29) "Investigator" means an employee of the Board, or independent investigator selected by the Board, who:

(a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

(b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

(c) provides an independent investigative report for UPPAC and the Board; and

(d) may also be a UPPAC attorney but does not have to be.

(30) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

(a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

(b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

(c) is maintained in the UPPAC Case File; and

(d) is classified as protected under Subsection 63G-2-305(34).

(31) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(32) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

(33) "Letter of reprimand" is a letter sent by the Board to an educator:

(a) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;

(b) that provides specific directives to the educator as a condition for removal of the letter;

(c) appears as a notation on the educator's CACTUS file; and

(d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

(34) "Letter of warning" is a letter sent by the Board to an educator:

(a) for misconduct that was inappropriate or unethical; and

(b) that does not warrant longer term or more serious discipline.

(35) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

(36) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

(37) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

(38) "Notification of Alleged Educator Misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

(39) "Party" means a complainant or a respondent.

(40) "Petitioner" means an individual seeking:

(a) an educator license following a denial of a license;

(b) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.

(41) "Probation" is an action directed by the Board that:

(a) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;

(b) may require the educator to be subject to additional monitoring by an identified person or entity;

(c) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;

(d) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and

(e) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.

(42) "Revocation" means a permanent invalidation of a Utah educator license consistent with Rule R277-517.

(43) "Respondent" means an educator against whom:

(a) a complaint is filed; or

(b) an investigation is undertaken.

(44) "Serve" or "service," as used to refer to the provision of notice to a person, means:

(a) delivery of a written document or its contents to the person or persons in question; and

(b) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical

or practicable of the information contained in the document.

(45) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.

(46) "Stipulated agreement" means an agreement between a respondent and the Board:

(a) under which disciplinary action is taken against the educator in lieu of a hearing;

(b) that may be negotiated between the parties and becomes binding:

(i) when approved by the Board; and

(ii) at any time after an investigative letter has been sent;

(c) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.

(47)(a) "Suspension" means an invalidation of a Utah educator license.

(b) "Suspension" may:

(i) include specific conditions that an educator must satisfy; and

(ii) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.

(48) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

(49) "UPPAC Attorney File" means a file:

(a) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:

(i) the attorney's notes prepared in the course of investigation; and

(ii) other documents prepared by the attorney in anticipation of an eventual hearing; and

(b) that is classified as protected pursuant to Subsection 63G-2-305(18).

(50) "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:

(a) contains information obtained from:

(i) BCI; and

(ii) letters, police reports, court documents, and other materials as provided by an educator; and

(b) is classified as private under Subsection 63G-2-302(2).

(51) "UPPAC Case File" means a file:

(a) maintained securely by UPPAC on an investigation into educator misconduct;

(b) opened following UPPAC's direction to investigate alleged misconduct;

(c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

(52) "UPPAC Evidence File" means a file:

(a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

(b) that contains correspondence between the Investigator and the educator or the educator's counsel;

(c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

(53) "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.

KEY: professional practices, definitions, educators

August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.
R277-211-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures regarding:

(a) notifications of alleged educator misconduct;

(b) review of notifications by UPPAC; and

(c) complaints, proposed stipulated agreements, approved stipulated agreements, and defaults.

(3) Except as provided in Subsection(4), Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.

R277-211-2. Initiating Proceedings Against Educators.

(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(a) upon receiving a notification of alleged educator misconduct; or

(b) upon the Executive Secretary's own initiative.

(2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(a) the informant's:

(i) name;

(ii) position, such as administrator, teacher, parent, or student;

(iii) telephone number;

(iv) address; and

(v) contact information;

(b) information of the educator against whom the allegation is made:

(i) name;

(ii) position, such as administrator, teacher, candidate; and

(iii) if known, the address and telephone number;

(c) the facts on which the allegation is based and supporting information; and

(d) signature of the informant and date.

(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) The Executive Secretary shall maintain all written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC case file.

R277-211-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) Upon receipt of a notification of alleged educator misconduct, the Executive Secretary shall recommend one of the following to UPPAC:

(i) dismiss the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address; or

(ii) initiate an investigation if UPPAC determines that the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.

(b) If the Executive Secretary recommends UPPAC initiate an investigation:

(i) UPPAC shall initiate an investigation; and

(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation:

(i) the educator to be investigated;

(ii) the LEA that employs the educator; and

(iii) the LEA where the alleged activity occurred.

(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.

(c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(c) If the investigator discovers additional evidence of unprofessional conduct that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(d) The investigator shall submit the investigative report to the Executive Secretary.

(e) The Executive Secretary shall review the investigative report described in Subsection(3)(d) with UPPAC.

(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.

(4) UPPAC shall review the investigative report and take one of the following actions:

(a) UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case; or

(b) UPPAC may make an initial recommendation of appropriate action or disciplinary letter.

(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC attorney to:

(a) prepare and serve a complaint; or

(b) negotiate and prepare a proposed stipulated agreement.

(6)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file and evidence file to the educator.

(b) UPPAC may charge fees in accordance with R277-103-5 if the educator requests a paper copy.

(7)(a) A proposed stipulated agreement shall conform to the requirements set forth in Section R277-211-6.

(b) An educator may stipulate to any recommended disposition for an action.

(8) The Executive Secretary shall forward any proposed stipulated agreement to the Board for approval.

R277-211-4. Expedited Hearings.

(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

(2)(a) The Executive Secretary shall hold an expedited hearing within 30 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(b) The Executive Secretary or the Executive Secretary's designee shall conduct an expedited hearing with the following additional invited participants:

(i) the educator;

(ii) the educator's attorney or representative;

(iii) a UPPAC attorney;

(iv) a voting member of UPPAC; and

(v) a representative of the educator's LEA.

(3) The panel may consider the following matters at an expedited hearing:

(a) an educator's oral or written explanation of the events;

(b) a police report;

(c) a court docket or transcript;

(d) an LEA's investigative report or employment file; and

(e) additional information offered by the educator if the panel deems it probative of the issues at the expedited hearing.

(4) After reviewing the evidence described in Subsection (3), the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(a) close the case;

(b) close the case upon completion of court requirements;

(c) recommend issuance of a disciplinary letter to the Board;

(d) open a full investigation; or

(e) recommend action by the Board, subject to an educator's due process rights under these rules.

(5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

(6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-211-5. Complaints.

(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, the Executive Secretary shall direct the UPPAC attorney to serve a complaint upon the educator being investigated.

(2) At a minimum, a complaint shall include:

(a) a statement of legal authority and jurisdiction under which the action is being taken;

(b) a statement of the facts and allegations upon which the complaint is based;

(c) other information that the investigator believes is necessary to enable the respondent to understand and address the allegations;

(d) a statement of the potential consequences if an allegation is found to be true or substantially true;

(e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;

(f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;

(g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 45 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(i) a copy of the applicable hearing rules as required by Subsection 53A-6-604(2).

(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's representative with the Executive Secretary within 30 days after the complaint is mailed.

(b) The answer may include a request for a hearing, and shall include:

(i) the file number of the complaint;

(ii) the names of the parties;

(iii) a statement of the relief that the respondent seeks; and

(iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

(c) As an alternative to filing an answer, the respondent may file a voluntary surrender pursuant to Rule R277-216.

(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer, the Executive Secretary shall schedule a hearing, if requested by the respondent, as provided in Rule R277-212.

(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the UPPAC attorney may negotiate a proposed stipulated agreement with the respondent.

(c) A proposed stipulated agreement described in Subsection(5)(b) shall be submitted to the Board for the Board's final approval.

(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-211-7.

(b) Except as provided in Subsection R277-211-7(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-6. Proposed Consent to Discipline.

(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a proposed consent to discipline.

(2) By entering into a proposed consent to discipline, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.

(3) At a minimum, the Executive Secretary shall include

the following in a proposed consent to discipline:

(a) a summary of the facts, the allegations, the presumption described in Rule R277-215, mitigating or aggravating factors described in Rule R277-215, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline as true for purposes of the Board administrative action;

(c) a statement that the respondent:

(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(d) a statement that the respondent agrees to the terms of the proposed consent to discipline and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(e) if for suspension or revocation of a license, a statement that the respondent:

(i) may not seek or provide professional services in a public school in the state;

(ii) may not seek to obtain or use an educator license in the state; or

(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(B) satisfies other provisions provided in the proposed consent to discipline;

(f) a statement that the action and the proposed consent to discipline shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(g) a statement that respondent waives the respondent's right to contest the facts stated in the proposed consent to discipline at a subsequent reinstatement hearing, if any;

(h) a statement that all records related to the proposed consent to discipline shall remain permanently in the UPPAC case file;

(i) a statement reflecting the proposed consent to discipline classification under Title 63G, Chapter 2, Government Records Access and Management Act;

(j) a statement that a violation of the terms of an approved consent to discipline may result in additional disciplinary action and may affect the reinstatement process; and

(k) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated proposed stipulated agreement unless the Board approves the proposed consent to discipline.

(4)(a) The Executive Secretary shall forward a proposed consent to discipline to the Board for approval.

(b) If the Board does not approve a proposed consent to discipline, the Board may:

(i)(A) remand the case to UPPAC and may include issues that need to be addressed;

(B) offer respondent the opportunity for a hearing; or

(C) provide alternative terms and disposition to the Executive Secretary, that would be satisfactory to the Board to be submitted to the educator for consideration;

(ii) direct the Executive Secretary to issue a disciplinary letter or dismiss the matter; or

(iii) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, as modified, is a final Board administrative action without further Board consideration.

(6) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(7) If the Board remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i)(B), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action and the Executive Secretary shall:

(a) notify the parties of the decision;

(b) update CACTUS to reflect the action;

(c) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(i) a revocation; or

(ii) a suspension;

(d) direct the appropriate penalties to begin; and

(e) notify the LEAs throughout the state.

R277-211-7. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(a) the Executive Secretary shall prepare and serve on the respondent an order of default including:

(i) a statement of the grounds for default; and

(ii) a recommended disposition if the respondent fails to file a response to a complaint;

(b) ten days following service of the order of default, a UPPAC attorney shall attempt to contact respondent by telephone or electronically;

(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to respond to a complaint.

(2) Except as provided in Subsection (3), if an order of default is issued, the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-8. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.

(2) If the Board does not approve a recommendation for a disciplinary letter or dismissal described in Subsection (1), the Board may:

(a) remand the case to UPPAC with:

(i) direction as to the issues UPPAC should address;

(ii) alternative terms and disposition that should be satisfactory to the Board to be submitted to the educator for

consideration; and

(iii) the opportunity for the educator to participate in a hearing;

(b) direct the Executive Secretary to issue a different level of disciplinary letter;

(c) dismiss the matter; or

(d) take other appropriate action consistent with due process and Rule R277-215.

(3) If the Board approves a disciplinary letter, the Executive Secretary shall:

(a) prepare the disciplinary letter and mail it to the educator;

(b) place a copy of the disciplinary letter in the UPPAC case file; and

(c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings
August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-212. UPPAC Hearing Procedures and Reports.
R277-212-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

(3) The standards and procedures of Title 63G, Chapter 4, Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-212-2. Scheduling a Hearing.

(1)(a) Following receipt of an answer by respondent requesting a hearing, or at the direction of the Board to give the respondent an opportunity to have a hearing:

(i) UPPAC shall select panel members;

(ii) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and

(iii) UPPAC shall schedule the date, time, and place for the hearing.

(b) The Executive Secretary shall schedule a hearing for a date that is not less than 45 days nor more than 180 days from the date the Executive Secretary receives the answer unless otherwise stipulated by the parties.

(c) The required scheduling periods may be waived by mutual written consent of the parties or by the hearing officer for good cause shown.

(2)(a) Any party may request a change of hearing date by submitting a request in writing that shall:

(i) include a statement of the reasons for the request; and

(ii) be submitted to the hearing officer at least five days prior to the scheduled date of the hearing.

(b) The hearing officer shall determine whether the reason stated in the request is sufficient to warrant a change.

(c) If the hearing officer finds that the reason for the request for a change of hearing date is sufficient, the hearing officer shall promptly notify all parties of the new time, date, and place for the hearing.

(d) If the hearing officer does not find the reason for the request for a change of hearing date to be sufficient, the hearing officer shall immediately notify the parties that the request has been denied.

(e) The hearing officer and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

(3) An educator is entitled to a hearing on any matter in which an action is recommended.

(4) An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended.

R277-212-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

(1)(a) The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

(b) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

(c) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(d) A hearing officer:

(i) may require the parties to submit a brief and a list of witnesses prior to the hearing;

(ii) presides at the hearing and regulates the course of the proceeding;

(iii) administers an oath to a witness as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(iv) may take testimony, rule on a question of evidence, and ask a question of a witness to clarify a specific issue; and

(v) prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

(2)(a) UPPAC shall select three or more individuals to serve as members of the hearing panel.

(b) As directed by UPPAC, any licensed educator may serve as a panel member, if needed.

(c) The majority of panel members shall be current UPPAC members.

(d) UPPAC shall select panel members on a rotating basis to the extent practicable.

(e) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

(f) If the respondent is a teacher, at least one panel member shall be a teacher.

(g) If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

(3) The requirements of Subsection (2) may be waived only upon the stipulation of both UPPAC and the respondent.

(4)(a) A UPPAC panel member shall:

(i) assist a hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(ii) ask a question of a witness to clarify a specific issue;

(iii) review all evidence and briefs, if any, presented at the hearing;

(iv) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

(v) assist the hearing officer in preparing the hearing report.

(b) A panel member may only consider the evidence approved for admission by the hearing officer.

(c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(d) The agreement to substitute a panel member shall be in writing.

(e) Parties may agree to a two-member UPPAC panel in an emergency situation.

(f) If the parties do not agree to a substitution or to having a two-member panel, the Executive Secretary shall reschedule the hearing.

(5)(a) A party may request that the Executive Secretary disqualify a hearing officer by submitting a written request for disqualification to the Executive Secretary.

(b) A party shall submit a request to disqualify a hearing officer to the Executive Secretary at least 15 days before a scheduled hearing.

(6)(a) The Executive Secretary shall review a request described in Subsection (5) and supporting evidence to determine whether the reasons for the request are substantial and compelling.

(b) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if

necessary, reschedule the hearing.

(7) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(8)(a) If the Executive Secretary denies a request to disqualify a hearing officer described in Subsection (5), the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

(b) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

(c) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(d) The decision of the Superintendent described in Subsection (8)(c) is final.

(e) If a party fails to file an appeal within the time requirements of Subsection (8)(b), the appeal shall be deemed denied.

(f) If the Executive Secretary fails to meet the time requirements described in Subsection (6) or (8), the request or appeal is approved.

(9)(a) A UPPAC member shall recuse himself or herself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(b) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

(i) the hearing officer; or

(ii) to the Executive Secretary if there is no hearing officer.

(c) A party shall submit a request described in Subsection (9)(b) no less than 15 days before a scheduled hearing.

(d) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

(i) review a request described in Subsection (9)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(ii) if the reasons for the request described in Subsection (9)(b) are substantial and compelling, disqualify the panel member.

(e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(i) UPPAC shall appoint a replacement; and

(ii) the Executive Secretary shall, if necessary, reschedule the hearing.

(f) If a request described in Subsection (9)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(g) The requesting party may file a written appeal of a denial described in Subsection (9)(f) with the Superintendent no later than five days prior to the hearing date.

(h) If the Superintendent finds that an appeal described in Subsection (9)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(i) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(j) The decision of the Superintendent described in Subsection (9)(h) is final.

(k) If a party fails to file an appeal within the time requirements of Subsection (9)(g), the appeal shall be deemed denied.

(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection (9), the request or appeal is approved.

(10) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

(11) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-212-4. Preliminary Instructions to Parties to a Hearing.

(1) A hearing shall be scheduled no less than 45 days after receipt of an answer, unless otherwise stipulated by the parties.

(2) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

(a) date, time, and location of the hearing;

(b) names and LEA affiliations of each panel member, and the name of the hearing officer; and

(c) instructions for accessing these rules.

(3) No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(a) a brief, if requested by the hearing officer containing:

(i) any procedural and evidentiary motions along with the party's position regarding the allegations; and

(ii) relevant laws, rules, and precedent;

(b) the name of the person who will represent the party at the hearing;

(c) a list of witnesses expected to be called, including a summary of the testimony that each witness is expected to present;

(d) a summary of documentary evidence that the party intends to submit; and

(e) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ten days prior to the hearing.

(4)(a) Except as provided in Subsection (4)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection (3).

(b) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

(i) the parties stipulate to the presentation of the witness or evidence at the hearing; or

(ii) the hearing officer makes a determination of good cause to allow the witness or evidence.

(5) If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

(6) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-212-5. Hearing Parties' Representation.

(1) A UPPAC attorney shall represent the complainant.

(2) A respondent may represent himself or herself or be represented, at the respondent's own cost, by another person.

(3) The informant has no right to:

(a) individual representation at the hearing; or

(b) to be present or heard at the hearing unless called as a witness.

(4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-212-6. Discovery Prior to a Hearing.

(1) Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.

(2) Unduly burdensome legalistic discovery may not be used to delay a hearing.

(3) A hearing officer may limit discovery:

(a) at the discretion of the hearing officer; or

(b) upon a motion by either party.

(4) A hearing officer rules on all discovery requests and motions.

(5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

(a) requested by either party; and

(b) notice of intent to call the witness has been timely provided as required by Section R277-212-4.

(6) The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

(7)(a) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-212-10 have been met.

(b) A respondent may not subpoena the UPPAC attorney or investigator as an expert witness.

R277-212-7. Burden and Standard of Proof for UPPAC Proceedings.

(1) In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-212-11(11), the Board shall have the burden of proving that an action against the license is appropriate.

(2) An applicant for licensing has the burden of proving that licensing is appropriate.

(3) The standard of proof in all UPPAC hearings is a preponderance of the evidence.

(4) The Utah Rules of Evidence are not applicable to UPPAC proceedings.

(5) The criteria to decide an evidentiary question are:

(a) reasonable reliability of the offered evidence;

(b) fairness to both parties; and

(c) usefulness to UPPAC in reaching a decision.

(6) The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-212-8. Deportment.

(1) Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.

(2) A hearing officer may exclude a person from the hearing room who fails to conduct himself or herself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

(3) Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-212-9. Hearing Record.

(1) A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.

(2) An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.

(3) If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

(4) All evidence and statements presented at a hearing shall become part of the UPPAC case file and may not be removed except by direction of the Executive Secretary or by order of the Board.

(5)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file to the educator.

(b) UPPAC may charge fees in accordance with Rule R277-103-5 if the educator requests a paper copy.

R277-212-10. Expert Witnesses in UPPAC Proceedings.

(1) A hearing officer may allow testimony by an expert witness.

(2) A party may call an expert witness at the party's own expense.

(3) A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

(a) notice of intent of a party to call an expert witness;

(b) the identity and qualifications of an expert witness;

(c) the purpose for which the expert witness is to be called; and

(d) any prepared expert witness report.

(4) Defects in the qualifications of an expert witness, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

(5) An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have the testimony considered as part of the record in the same manner as the testimony of any other expert.

R277-212-11. Evidence and Participation in UPPAC Proceedings.

(1) A hearing officer may not exclude evidence solely because the evidence is hearsay.

(2) Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

(3) Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.

(4) On the hearing officer's own motion or upon objection by a party, the hearing officer:

(a) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

(b) shall exclude evidence that is privileged under law applicable to administrative proceedings in the state unless waived;

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

(d) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of the state, or from the record of other proceedings before the agency.

(5)(a) In addition to a rebuttable presumption described

in Subsection 53A-6-306(3)(e), a rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

(i) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor; or

(ii) failed to defend himself or herself against the charge when given a reasonable opportunity to do so.

(b) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.

(c) Evidence of behavior described in Subsection (11)(b) may include:

(i) conviction of a felony;

(ii) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(iii) an investigation of an educator's license, certificate, or authorization in another state; or

(iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

R277-212-12. Testimony of a Minor Victim or Witness.

(1) For purposes of this section, a "minor victim or witness" is an individual who is less than 18 years old at the time of hearing.

(2) If a case involves allegations of child abuse or of a sexual offense against a minor under applicable federal or state law, either party, a member of the hearing panel, or the hearing officer, may request that a minor victim or witness be allowed to testify outside of the respondent's presence.

(3) If the hearing officer determines that a minor victim or witness would suffer undue emotional or mental harm, or that the minor victim or witness's testimony in the presence of the respondent would be unreliable, the minor victim or witness's testimony may be admitted as described in this section.

(4) An oral statement of a minor victim or witness that is recorded prior to the filing of a complaint is admissible as evidence in a hearing regarding the offense if:

(a) no attorney for either party is in the minor victim or witness's presence when the statement is recorded;

(b) the recording is visual and aural and is recorded;

(c) the recording equipment is capable of making an accurate recording;

(d) the operator of the equipment is competent;

(e) the recording is accurate and has not been altered; and

(f) each voice in the recording is identified.

(5) The testimony of a minor victim or witness may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if:

(a) only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor victim or witness may be with the minor victim or witness during the testimony;

(b) the respondent is not present during the minor victim or witness's testimony;

(c) the hearing officer ensures that the minor victim or witness cannot hear or see the respondent;

(d) the respondent is permitted to observe and hear, but not communicate with the minor victim or witness; and

(e) only hearing panel members, the hearing officer, and the attorneys question the minor victim or witness.

(6)(a) If a witness testifies under circumstances described in Subsection (5), a pro se educator, may submit written questions to the hearing officer to ask on the educator's behalf.

(b) A hearing officer shall take appropriate recesses to ensure a pro se educator is allowed to ask all needed follow up questions.

(7) If the hearing officer determines that the testimony of a minor victim or witness may be taken consistent with Subsections (2) through (5), the minor victim or witness may not be required to testify in any proceeding where the recorded testimony is used.

R277-212-13. Hearing Report.

(1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted;

(b) a statement of relevant precedent, if available;

(c) a statement of applicable law and rule;

(d) presumptions applied by UPPAC;

(e) mitigating and aggravating circumstances considered by UPPAC;

(f) a recommended disposition of UPPAC panel members that shall be one or an appropriate combination of the following:

(i) dismissal of the complaint;

(ii) letter of admonishment;

(iii) letter of warning;

(iv) letter of reprimand;

(v) probation, to include the following terms and conditions:

(A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

(B) a recommended minimum probationary time;

(C) conditions that can be monitored;

(D) if recommended by the panel, a person or entity to monitor a respondent's probation;

(E) a statement providing for costs of probation, if appropriate; and

(F) whether or not the respondent may work in any capacity in public education during the probationary period;

(vi) disciplinary action held in abeyance;

(vii) suspension, to include the following terms and conditions:

(A) a recommended minimum time period consistent with R277-215 after which an educator may request a reinstatement hearing under Rule R277-213; and

(B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-213-2; or

(viii) revocation; and

(g) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

(2) Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.

(3) Any of the consequences described in Subsection (1)(d) may be imposed in the form of a disciplinary action held in abeyance.

(4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory

completion of probationary conditions.

(b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline if the respondent does not fully satisfy the probationary conditions.

(5)(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(b) Hearing panel members shall notify the hearing officer of any changes to the report:

(i) as soon as possible after receiving the report; and

(ii) prior to the 20 day completion deadline of the hearing report.

(c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(d) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

(f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(g) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

(h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

(i) there are no significant procedural errors;

(ii) the hearing officer's recommendations are based upon a preponderance of the evidence presented at the hearing; and

(iii) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

(i) After the UPPAC review, the Executive Secretary shall send a copy of the hearing report to:

(i) the Board for further action;

(ii) the respondent; and

(iii) the UPPAC case file.

(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-210-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.

(b) The request for review shall consist of:

(i) the name, position, and address of the appellant;

(ii) the issue being appealed; and

(iii) the signature of the appellant or the appellant's representative.

(c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.

(d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:

(i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or

(ii) direct the UPPAC Executive Secretary to take specific administrative action.

(e) After UPPAC completes reconsideration, the Superintendent shall:

(i) notify all parties; and

(ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.

(7) If the Board does not approve a UPPAC hearing report, the Board may:

(a) remand the case to UPPAC with direction to cure due process issues; or

(b) direct the Executive Secretary to make other evidence available pursuant to Section R277-212-14 before issuing a final decision with official findings; or

(c) issue findings based on the UPPAC hearing record and report:

(i) specifying the reasons, including presumptions and the mitigating and aggravating circumstances the Board considered, why the Board disapproves of the hearing report;

(ii) adopting the Board's decision on the matter; and

(iii) directing the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action; or

(d) take other appropriate action consistent with due process and R277-215.

(8) Following Board adoption of a hearing report or the Board's decision under Subsection (7)(b), the Executive Secretary shall:

(a) notify the educator;

(b) notify the educator's employer;

(c) update CACTUS to reflect the Board's action; and

(d) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(i) a revocation; or

(ii) a suspension.

(9) The hearing report is a public document under Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

(10) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

(11) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

(a) notify the Utah State Bar of the failure;

(b) reduce the hearing officer's compensation consistent with the failure;

(c) take timely action to avoid disadvantaging either party; or

(d) preclude the hearing officer from further employment by the Board for UPPAC purposes.

(12) The Executive Secretary may waive the deadlines within this section if the Executive Secretary finds good cause.

(13) All criteria of letters of warning and reprimand, probation, suspension, and revocation apply to the comparable sections of the final hearing report.

R277-212-14. Additional Relevant Evidence.

(1) If the Board directs the Executive Secretary to make additional relevant evidence available to the Board for review, before the Board issues a final decision with official findings, the Executive Secretary shall give the educator a notice that includes:

(a) what additional relevant evidence the Board directed UPPAC to make available to review;

(b) file a response described in Subsection (2); and

(c) a statement that the educator's failure to file either a timely written response or request for hearing would be a waiver of the right to either respond, or request a hearing.

(2) An educator who receives a notice described in Subsection (1) may submit one of the following within 30 days of the notice described in Subsection (1) was sent:

(a) a written response to the additional relevant evidence that the Board directed the Executive Secretary to make

available for review; or

(b) a written request for a hearing before the Board to respond to the additional relevant evidence.

(3) If the educator fails to timely respond as provided in Subsection (2):

(a) the Executive Secretary shall notify the respondent that the respondent waived the right to respond or request a hearing; and

(b) the Board may proceed to view the additional relevant evidence.

(4) If the educator files a timely written response, the Executive Secretary shall submit the written response to the Board for consideration before the Board issues a final decision.

(5) If the educator files a timely hearing request, before the Board issues a final decision, the Executive Secretary shall:

(a) request a hearing before the Board, as described in Subsection (7);

(b) provide the respondent notice of the hearing meeting the requirements of Section 53A-6-604;

(c) include a copy of the Board rules that apply; and

(d) notify the respondent that if the respondent fails to attend or participate in the hearing:

(i) that the respondent has waived the right to appear and respond to the additional relevant evidence; and

(ii) that the Board may proceed to review the additional relevant evidence.

(6) The Board shall schedule a hearing described in Subseciton (5)(b) within no less than 45 days and no more than 90 days from the date the Executive Secretary receives the respondent's written request for a hearing.

(7) If the Board conducts a hearing described in Subsection (6), Sections R277-212-4, R277-212-5, and R277-212-7 through R277-212-12 apply.

(8) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

(a) requested by either party; and

(b) notice of intent to call the witness has been timely provided as required by Section R277-212-4.

(9) Subsection R277-212-3(1) governs the appointment of a hearing officer to conduct hearing, but no hearing report is required.

(10) After the hearing or viewing the additional relevant evidence, the Board will prepare findings that support the reasons for the Board's decision, including the presumptions and mitigating and aggravating circumstances described in R277-215 that the Board applied.

(11) Findings issued by the Board as described in Subsection (11) may not be based solely upon hearsay.

R277-212-15. Default.

(1)(a) The Executive Secretary shall prepare an order of default if:

(i) the respondent fails to file an answer as described in Subsection R277-211-5(4);

(ii) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(iii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or the respondent's representative during the course of the hearing process.

(b) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.

(2) The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

(3) Except as provided in Subsection (4), the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(4) An order of default shall result in an Executive Secretary recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-212-16. Rights of Victims at Hearings.

(1) If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

(a) advise the alleged victim that a hearing has been scheduled;

(b) notify the alleged victim of the date, time, and location of the hearing; and

(c) notify the alleged victim of the right to attend the hearing alone or with a victim advocate present.

(2) An alleged victim entitled to notification of a hearing is permitted, but is not required, to attend the hearing.

(3) An alleged victim or witness may have a victim advocate attend the hearing with them.

KEY: hearings, reports, educators

August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-213. Request for Licensure Reinstatement and Reinstatement Procedures.
R277-213-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish procedures regarding educator license reinstatement.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-213-2. Application for Licensing Following Denial or Loss of License.

(1)(a) An individual who has been denied a license or lost the individual's license through suspension, or allowed a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.

(b) A request for review described in Subsection (1)(a) shall:

(i) be in writing;

(ii) be transmitted to the UPPAC Executive Secretary; and

(iii) have the following information:

(A) name and address of the individual requesting review;

(B) the action being requested;

(C) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

(D) reason(s) that the individual seeks reinstatement; and

(E) signature of the individual requesting review.

(2)(a) The Executive Secretary shall review the request with UPPAC.

(b) If UPPAC determines that the request is incomplete or invalid:

(i) the Executive Secretary shall deny the request; and

(ii) notify the individual requesting reinstatement of the denial.

(c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-213-3.

(3)(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

(b) An individual requesting reinstatement of a suspended license shall:

(i) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(ii) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(iii) undergo a criminal background check not more than six months prior to the requested hearing; and

(iv) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

(4) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-213-3. Reinstatement Hearing Procedures.

(1) A hearing officer shall:

(a) preside over a reinstatement hearing; and

(b) rule on all procedural issues during the reinstatement hearing as they arise.

(2) A hearing panel, comprising individuals as set forth in Subsection (2), shall:

(a) hear the evidence; and

(b) along with the UPPAC attorney and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

(3) An individual seeking reinstatement may:

(a) be represented by counsel; and

(b) may present evidence and witnesses.

(4) A party may present evidence and witnesses consistent with Rule R277-212.

(5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

(6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

(7) The Executive Secretary, represented by a UPPAC attorney, shall present any evidence or documentation that explains and supports UPPAC's recommendation in the matter.

(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-212.

(9) The individual seeking reinstatement shall:

(a) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;

(b) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

(c) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;

(d) be prepared to completely and candidly respond to the questions of the UPPAC attorney and hearing panel regarding:

(i) the misconduct that caused the license suspension;

(ii) subsequent rehabilitation activities;

(iii) counseling or therapy received by the individual related to the original misconduct; and

(iv) work, professional actions, and behavior between the suspension and reinstatement request;

(e) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(f) provide copies of all reports and documents to the UPPAC attorney and hearing officer at least five days before a reinstatement hearing; and

(g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

(10) The UPPAC attorney, the hearing panel, and

hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(a) underlying misconduct which is the basis of the sanction on the educator's license;

(b) specific and exact compliance with reinstatement requirements;

(c) counseling, if required for reinstatement;

(d) specific plans for avoiding previous misconduct; and

(e) demeanor and changed understanding of petitioner's professional integrity and actions consistent with Rule R277-515.

(11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

(12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

(13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(a) prepare a hearing report in accordance with the requirements set forth in Section R277-213-5; and

(b) provide the hearing report to the UPPAC Executive Secretary.

(14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

(15) UPPAC may do the following upon receipt of the hearing report:

(a) accept the hearing panel's recommendation as prepared in the hearing report;

(b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(i) directed by UPPAC;

(ii) prepared by the UPPAC Executive Secretary; and

(iii) attached to the hearing report; or

(c) reject the hearing panel's recommendation.

(16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

(17) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.

(18) If the Board reinstates an educator's license, the Executive Secretary shall:

(a) update CACTUS to reflect the Board's action; and

(b) report the Board's action to the NASDTEC Educator Information Clearing house.

(19) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

(a) the educator;

(b) the educator's LEA.

R277-213-4. Rights of a Victim at a Reinstatement Hearing.

(1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

(2) A UPPAC's notification described in Subsection (1) shall:

(a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

(b) notify the victim or the victim's family of the date, time, and location of the hearing;

(c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

(d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

(3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

(a) to attend the hearing; and

(b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

(4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

(5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-213-5. Reinstatement Hearing Report.

(1) A hearing officer shall provide the following in a reinstatement hearing report:

(a) a summary of the background of the original disciplinary action;

(b) adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;

(d) the hearing panel's recommendation; and

(e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member's voted concerning reinstatement.

(2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

(3) If a license is reinstated, an educator's CACTUS file shall be updated to:

(a) remove the flag;

(b) show that the educator's license was reinstated; and

(c) show the date of formal Board action reinstating the license.

R277-213-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.

(2) An educator may request that the Superintendent order a reconsideration of the prior Board licensing action if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action; or

(ii) newly discovered evidence:

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for reconsideration by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for reconsideration by the Superintendent

must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from an educator and the Executive Secretary in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall make a recommendation to the Board to conduct a new hearing consistent with Rule R277-212.

(7) If the Superintendent finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their previous action.

KEY: licensure, reinstatement, hearings
August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-214. Utah Professional Practices Advisory Commission Criminal Background Review.
R277-214-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is:

(a) to establish procedures for an applicant to proceed toward licensing; or

(b) be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-214-2. Initial Submission and Evaluation of Information.

(1) The Executive Secretary shall review all information received as part of a criminal background review.

(2) The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

(a) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;

(b) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available; and

(c) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

(3)(a) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

(b) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

(4) If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.

(5) It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

(6) The Executive Secretary shall process criminal background reviews subject to the following criteria:

(a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

(b) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

(i) singular offenses committed by an applicant, excluding offenses identified in Subsection(6)(c), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

(c) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

(i) convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;

(ii) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(iii) convictions or pleas in abeyance for felonies;

(vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(v) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(vi) convictions or pleas in abeyance involving children in any way; and

(vii) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(d) If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(17), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

(7) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

(8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53A-6-405;

(b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

(c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

(9) If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

(10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).

R277-214-3. Alcohol and Drug Related Offenses of an Individual Who Does Not Hold Licensing.

(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of an alcohol related offense or a drug related offense within five years of the date of the background check, the minimum conditions

described in this Subsection (1) shall apply.

(b) One conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge.

(c) Two convictions--the individual shall be denied clearance for a period of two years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.

(d) Three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge, and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.

(2) UPPAC or the Board may take action in excess of the minimum conditions specified in Subsection (1) if aggravating circumstances exist as set forth in Subsection R277-215-2(9).

KEY: educator licenses, background reviews, background checks

August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.
R277-215-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.

(2) Revocation is presumed appropriate if an educator:

(a) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);

(b) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;

(c) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);

(d) intentionally provides alcohol or illegal drugs to a minor.

(3)(a) Suspension of ten years or more is presumed if an educator is convicted of any felony not specified in Subsection (2).

(b) An educator who is suspended based on a felony conviction under Subsection (3)(a) may apply for a reinstatement hearing early if the educator's felony:

(i) is expunged; or

(ii) is reduced pursuant to Section 76-3-402.

(4) Suspension of three years or more is presumed appropriate if an educator:

(a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;

(b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor;

(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or

(d) is convicted of intentional theft or misappropriation of public funds.

(5) Suspension of one to three years is presumed appropriate, if an educator:

(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

(b) is convicted of one or more misdemeanor violence offenses in the last 3 years;

(c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;

(d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:

(i) does not result in a criminal conviction; and

(ii) does not meet the circumstances described in Subsection 53A-11-802(2);

(e) threatens a student physically, verbally, or electronically;

(f) engages in a pattern of boundary violations with a student under a circumstance not described in Subsection (3)(a);

(g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

(h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

(i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

(j) engages in a pattern of or a single egregious incident of:

(i) harassing;

(ii) bullying; or

(iii) threatening a co-worker or community member; or

(k) knowingly and deliberately falsifies or misrepresents information on an education-related document.

(6) A suspension of up to one year is presumed appropriate if an educator:

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:

(i) Board rule or LEA policy; or

(ii) verbal or written notice from an LEA or UPPAC;

(b) fails to report to appropriate authorities suspected child or sexual abuse; or

(c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(7) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

(b) engages in minimal inappropriate physical contact with a student;

(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

(d) engages in an inappropriate discussion with a student that violates state or federal law;

(e) knowingly violates a requirement or procedure for special education needs;

(f) knowingly violates a standardized testing protocol;

(g) is convicted of one of the following with or without court probation:

(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

(ii) impaired driving under Section 41-6a-502.5; or

(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

(i) fails to make a report required by Rule R277-516;

(j) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted of one or two misdemeanor offenses not otherwise listed;

(k) engages in an activity that constitutes a conflict of interest; or

(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

(8) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from

the presumptions if:

(a) the presumption does not involve a revocation mandated by statute; and

(b) aggravating or mitigating factors exist that warrant deviation from the presumption.

(9) An aggravating factor may include the following:

(a) the educator has engaged in prior misconduct;

(b) the educator presents a serious threat to a student;

(c) the educator's misconduct directly involved a student;

(d) the educator's misconduct involved a particularly vulnerable student;

(e) the educator's misconduct resulted in physical or psychological harm to a student;

(f) the educator violated multiple standards of professional conduct;

(g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;

(h) the educator's misconduct continued after investigation by the LEA or UPPAC;

(i) the educator holds a position of heightened authority as an administrator;

(j) the educator's misconduct had a significant impact on the LEA or the community;

(k) the educator's misconduct was witnessed by a student;

(l) the educator was not honest or cooperative in the course of UPPAC's investigation;

(m) the educator was convicted of crime as a result of the misconduct;

(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and

(o) the educator is on criminal probation or parole; or

(p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.

(10) A mitigating factor may include the following:

(a) the educator's misconduct was the result of strong provocation;

(b) the educator was young and new to the profession;

(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;

(d) the educator's attitude suggests amenability to supervision and training;

(e) the educator has little or no prior disciplinary history;

(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;

(g) the educator was a less active participant in a larger offense;

(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;

(i) the educator has voluntarily sought treatment or made restitution for the misconduct;

(j) there was insufficient training or other policies that might have prevented the misconduct;

(k) there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;

(l) the educator self-reported the misconduct; or

(m) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

(11)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

KEY: educators, disciplinary presumptions
August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-216. Surrender of License with UPPAC Investigation Pending.
R277-216-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to establish procedures for Board consideration of an educator request to surrender a license in the face of a UPPAC investigation.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-216-2. Petition to Surrender.

(1) An educator may surrender an educator license prior to the resolution of a UPPAC investigation.

(2) An educator who requests to surrender an educator license under Subsection (1), shall submit a petition or stipulated agreement to UPPAC for submission to the Board, which shall include:

(a) a brief statement of the procedural history of the investigation leading up to the voluntary surrender;

(b) a statement that the educator is entitled to due process in UPPAC's investigation and that the educator freely and voluntarily waives the educator's due process rights, including:

(i) a right to a hearing;

(ii) a right to confront and cross examine witnesses;

(iii) a right to present witnesses;

(iv) a right to an impartial decision based upon evidence presented at the hearing; and

(v) a right to subpoena witnesses; and

(c) a statement that the educator surrenders the educator's license freely and voluntarily and without coercion or duress;

(d) a statement that the educator:

(i) is represented by counsel; or

(ii) understands the educator's right to be represented by counsel and knowingly and voluntarily waives the assistance of counsel in UPPAC's investigation;

(e) a statement that the educator is fully aware of the implications of surrendering the educator's license with an investigation pending, including:

(i) that the educator may not work, consult, or volunteer in any K-12 public school in the state of Utah in any capacity;

(ii) that the educator is not eligible for a reinstatement hearing at any time;

(iii) that UPPAC files and case resolution are subject to public disclosure in accordance with state and federal law;

(iv) that notification of the educator's license surrender will be shared with all states through NASDTEC; and

(v) except as provided in Subsection (3), that notification of the educator's license surrender will be:

(A) classified and reported as a voluntary surrender (UPPAC investigation); and

(B) shared with LEAs throughout the state.

(3) If an educator surrenders a license during an investigation of allegations described in Subsection 53A-6-501(5)(b), the surrender will be:

(a) classified and reported as a revocation; and

(b) shared with LEAs through the state.

(4)(a) Voluntary surrender of a license as set forth in this section is permanent.

(b) An educator who surrenders a license as set forth in this section is not eligible for a reinstatement hearing at any time.

R277-216-3. Review of Petition to Surrender.

(1)(a) Upon receiving a petition or stipulated agreement as provided in Subsection R277-216-2(2), the Executive Secretary shall review the request for surrender to determine if it meets the requirements set forth in the rule.

(b) If the requirements of Subsection R277-216-2(2) are not met, the Executive Secretary shall notify the educator that the request is insufficient and the reasons why the request is insufficient.

(c) If the requirements of Subsection R277-216-2(2) are met, the Executive Secretary shall notify the Board of the voluntary surrender and request direction on whether to continue the investigation.

(2) Upon receipt of a voluntary surrender of an educator license, the Executive Secretary shall:

(a) notify the educator:

(i) that the voluntary surrender was received;

(ii) whether the Board required UPPAC to continue the investigation;

(iii) that the voluntary surrender will be reported in the public record as a voluntary surrender with pending UPPAC investigation except as provided in Subsection R277-216-2(3);

(iv) that the voluntary surrender will be reported to NASDTEC and to LEAs throughout the state; and

(v) that the educator's license cannot be reinstated at any time.

(b) update CACTUS to reflect the disposition;

(c) report the disposition to NASDTEC;

(d) notify the educator's last employer of record;

(e) report the disposition to LEAs through the state; and

(f) provide the educator a copy of the report to LEAs described in Subsection (2)(e).

R277-216-4. Applicability of Rule.

This R277-216 does not apply to an educator's voluntary surrender of the educator's license if the educator is not being investigated by UPPAC.

KEY: educators, license surrender, UPPAC
August 12, 2016 **Art X Sec 3**
53A-6-306
53A-1-401

R277. Education, Administration.
R277-404. Requirements for Assessments of Student Achievement.
R277-404-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Sections 53A-1-603 through 53A-1-611, which direct the Board to adopt rules for the maintenance and administration of U-PASS;

(c) Subsection 53A-15-1403(9)(b), which requires the Board to adopt rules to establish a statewide procedure for excusing a student from taking certain assessments; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) provide consistent definitions; and

(b) assign responsibilities and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

R277-404-2. Definitions.

(1) "Benchmark reading assessment" means the Dynamic Indicators of Basic Early Literacy Skills or DIBELS assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.

(2) "College readiness assessment" means the American College Testing exam, or ACT.

(3) "English Learner" or "EL" student" means a student who is learning in English as a second language.

(4) "English language proficiency assessment" means the World-class Instructional Design and Assessment (WIDA) Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.

(5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.

(6) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

(7) "Online writing assessment" means the SAGE writing portion of the SAGE English Language Arts Assessment that measures writing performance for a student in grades 3 through 11.

(8) "Pre-post assessment" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency that has occurred during the school year.

(9) "State required assessment" means an assessment described in Subsection 53A-15-1403(9)(a).

(10) "Student Assessment of Growth and Excellence" or "SAGE" means a computer adaptive assessment for:

(a) English language arts grades 3 through 11;

(b) mathematics:

(i) grades 3 through 8; and

(ii) Secondary I, II, and III; and

(c) science:

(i) grades 4 through 8;

(ii) earth science;

(iii) biology;

(iv) physics; and

(v) chemistry.

(11) "Section 504 accommodation plan" means a plan:

(a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12) "Summative adaptive assessment" means the SAGE assessment, which:

(a) is administered upon completion of instruction to assess a student's achievement;

(b) is administered online under the direct supervision of a licensed educator;

(c) is designed to identify student achievement on the standards for the respective grade and course; and

(d) measures a range of student ability, within the grade or course level standards the student was taught, by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

(13)(a) "Utah alternate assessment" means an assessment instrument:

(i) for a student in special education with a disability so severe the student is not able to participate in the components of U-PASS even with an assessment accommodation or modification; and

(ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.

(b) "Utah alternate assessment" means:

(i) for science, the Utah Alternate Assessment (UAA); and

(ii) for English language arts and mathematics, the Dynamic Learning Maps (DLM).

(14) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and

(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(15) "Utah Performance Assessment System for Students" or "U-PASS" means:

(a) the summative adaptive assessment of a student in grades 3 through 12 in basic skills courses;

(b) the online writing assessment in grades 3 through 11;

(c) the college readiness assessment; and

(d) the summative assessment of a student in grade 3 to measure reading grade level using the end of year benchmark reading assessment.

R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, January 7, 2016, which establishes:

(a) the purpose of testing;

(b) the state assessments to which the policy applies;

(c) teaching practices before assessment occurs;

(d) required procedures for after an assessment is complete and for providing assessment results;

(e) unethical practices;

(f) accountability for ethical test administration;

(g) procedures related to ethics violations; and

(h) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

(a) http://www.schools.utah.gov/assessment/Directors/Resources/EthicsPolicy.aspx; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-404-4. Assessment System - Superintendent Responsibilities.

(1) The Board's comprehensive assessment system for all students in grades K-12 includes:

(a) the U-PASS assessments;

(b) pre-post kindergarten assessment for a kindergarten student as determined by the LEA;

(c) the benchmark reading assessment;

(d) the Utah alternate assessment, for an eligible student with a disability;

(e) the English language proficiency assessment;

(f) the National Assessment of Educational Progress (NAEP); and

(g) reporting by the Superintendent of U-PASS results.

(2) The report required by Subsection (1)(g) shall include:

(a) student performance based on information that is disaggregated with respect to race, ethnicity, gender, English proficiency, eligibility for special education services, and free or reduced price school lunch status;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, assessment administration protocols, and training; and

(c) summative adaptive assessment results disseminated by the Superintendent to an LEA, parent, and other, as appropriate, consistent with FERPA.

(3) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.

(4) The Superintendent shall designate a testing schedule for each state-required assessment and publish the testing window dates on the Board's website before the beginning of the school year.

R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.

(1) Except as provided in Section 53A-1-603, an LEA shall develop a comprehensive assessment system plan to include the assessments described in Subsection R277-404-5(1).

(2) The plan shall include:

(a) the dates that the LEA will administer each required assessment;

(b) if the LEA decided to offer its grade 11 students only the college readiness assessment and not the SAGE assessment;

(c) professional development for an educator to fully implement the assessment system;

(d) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics;

(e) training for an educator and an appropriate paraprofessional to utilize assessment results effectively to inform instruction; and

(f) adequate oversight of test administration to ensure compliance with Section 53A-1-603 as follows:

(i) an LEA or online provider shall test all enrolled students unless a student has a written parental excuse under Subsection 53A-15-1403(9);

(ii) a student participating in the Statewide Online Education Program is assessed consistent with Section 53A-15-1210; and

(iii) a third party vendor or contractor may not administer or supervise U-PASS.

(3) An LEA shall submit the plan to the Superintendent by September 15 annually.

(4) At least once each school year, an LEA shall provide professional development for all educators, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including educator responsibility for assessment security and proper professional practices.

(5) LEA assessment staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(6) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(7) An LEA educator or trained employee shall administer assessments required under R277-404-5 consistent with the testing schedule published on the Board's website.

(8) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(9)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for summative adaptive assessment administration for courses taught face to face or online.

R277-404-6. School Responsibilities.

(1) An LEA, school, or educator may not use a student's score on a state required assessment to determine:

(a) the student's academic grade, or a portion of the student's academic grade, for the appropriate course; or

(b) whether the student may advance to the next grade level.

(2) An LEA and school shall require an educator and assessment administrator and proctor to individually sign the Testing Ethics signature page provided by Superintendent acknowledging or assuring that the educator administers assessments consistent with ethics and protocol requirements.

(3) All educators and assessment administrators shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) All educators and assessment administrators and proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

(5) A student's IEP, EL, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.

(1)(a) Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(2) An LEA shall administer state required assessments to all students unless:

(a) the Utah alternate assessment is approved for specific students consistent with federal law and as specified in the student's IEP; or

(b) students are excused by a parent or guardian under Section 53A-15-1403(9) and as provided in this rule.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), upon exercising the right to exempt a child from a state required assessment under this provision, an LEA may not impose an adverse consequence on a child as a result of the exercise of rights under this provision.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53A-13-109.5 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53A-13-109.5(2), and may not graduate without successfully completing the requirements of Sections 53A-13-109.5 and R277-700-8.

(4)(a) In order to exercise the right to exempt a child from a state required assessment under this provision and insure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis and at least one day prior to beginning of the assessment.

(b) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA's specific form; and

(ii) the LEA's specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) School grading, teacher evaluations, and student progress reports or grades may not be negatively impacted by students excused from taking a state required assessment.

(7) Any assessment that is not a state required assessment, the administration of the assessments, and the consequence of taking or failing to take the assessments is governed by policy adopted by each LEA.

(8) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(9) An LEA may not reward a student for taking a state required assessment.

R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a standardized assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response or any other standardized assessment material at any time in a way that alters the student's intended response;

(d) use any prior form of any standardized assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(f) fail to administer a state required assessment;

(g) fail to administer a state required assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Section 63G-2-305, until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

R277-404-9. Data Exchanges.

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each assessment.

(5) An LEA shall ensure that all summative testing data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Consistent with Utah law, the Superintendent shall return assessment results from all required assessments to the school before the end of the school year.

KEY: assessments, student achievements
August 11, 2016 Art X Sec 3
Notice of Continuation September 16, 2013 53A-1-402 through 53A-1-611
53A-1-401(3)

R277. Education, Administration.
R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP).
R277-490-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-17a-162, which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

(2) The purpose of this rule is:

(a) to implement the BTSALP model in public schools through LEAs and consortia that submit grant applications to hire arts specialists who are paid on the licensed teacher salary schedule;

(b) to distribute funds to LEAs to purchase supplies and equipment as provided for in Subsections 53A-17a-162(4) and (6);

(c) to fund activities at endowed universities to provide pre-service training, professional development, research, and leadership for arts educators and arts education in Utah public schools; and

(d) to appropriately monitor, evaluate, and report programs and program results.

R277-490-2. Definitions.

(1) "Arts equipment and supplies" includes musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies.

(2) "Arts Program coordinator" or "coordinator" means an individual, employed full-time, who is responsible to:

(a) coordinate arts programs for an LEA or consortium;

(b) inform arts teachers;

(c) organize arts professional development including organizing arts local learning communities;

(d) oversee, guide, and organize the gathering of assessment data;

(e) represent the LEA or consortium arts program; and

(f) provide general leadership for arts education throughout the LEA or consortium.

(3) "Beverley Taylor Sorenson Elementary Arts Learning Program model," "BTSALP model," or "Program" means a program in grades K-6 with the following components:

(a) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum;

(b) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction; and

(c) other activities that may be proposed by an LEA on a grant application and approved by the Board.

(4) "Endowed university" means an institution of higher education in the state as defined in Subsection 53A-17a-162(1)(b).

(5) "Highly qualified school arts program specialist" or "arts specialist" means:

(a) an educator with:

(i) a current educator license; and

(ii) a Level 2 or K-12 specialist endorsement in the art form;

(b) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form;

(c) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under Rule R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre; or

(d) an individual who qualifies for an educator license under Board rule that qualifies the individual for the position provided that:

(i) an LEA provides an affidavit verifying that a reasonable search was conducted for an individual who would qualify for an educator license through other means; and

(ii) the LEA reopens the position and conducts a new search every two years.

(e) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

(6) "Matching funds" means funds that equal 20% of the total costs for salary plus benefits incurred by an LEA or consortium to fund the LEA or consortium's arts specialist.

R277-490-3. Arts Specialist Grant Program - LEA Consortium.

(1) LEAs may form a consortium to employ arts specialists appropriate for the number of students served.

(2) An LEA or a consortium of LEAs may submit a grant request consistent with time lines provided in this rule.

(3) An LEA or a consortium shall develop its proposal consistent with the BTSALP model outlined under R277-490-2(3).

(4) A consortium grant request shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.

(5) A consortium grant shall explain a schedule for each specialist to serve the group of schools within several of the LEAs similarly to an arts specialist in a single school.

(6) A consortium grant request shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

(7) An LEA's grant application shall include the collaborative development of the application with the LEA's partner endowed university and School Community Councils if matching funds come from School LAND Trust Funds.

R277-490-4. Arts Specialist Grant Program Timelines.

(1) An LEA or a consortium shall complete a program grant application annually.

(2) The Board shall grant funding priority to renewal applications.

(3) An LEA or consortium shall submit a completed application requesting funding to the Superintendent by May 1 annually.

(4) The Board shall designate an LEA or a consortium for funding no later than June 1 annually.

R277-490-5. Distribution of Funds for Arts Specialist.

(1) A program LEA or consortium shall submit complete information of salaries, including benefits, of all program specialists employed by the LEA or consortium no later than September 30 annually.

(2) If a program LEA or consortium provides matching funds, the Superintendent shall distribute funds to program grant recipients annually equal to 80% of the salaries plus benefits for approved hires in the program, consistent with Subsections 53A-17a-162(5) and(6).

(3)(a) An individual program specialist grant amount

may not exceed $70,000 in FY 2016.

(b) The upper limit on the grant amount shall adjust each year at the same rate as the increase in the WPU.

(4) A grant recipient shall provide matching funds for each specialist funded through the program.

R277-490-6. Distribution of Funds for Arts Specialist Supplies.

(1) The Board shall distribute funds for arts specialist supplies to an LEA or consortium as available.

(2) A grant recipient shall distribute funds to participating schools as provided in the approved LEA or consortium grant and consistent with LEA procurement policies.

(3) A grant recipient shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the grant recipient's plan, this rule, and the law.

(4) Summary information about effective supplies and equipment shall be provided in the school or consortium evaluation of the program.

R277-490-7. LEA or Consortium Employment of Arts Coordinators.

(1)(a) An LEA or consortium may apply for funds to employ arts coordinators in the LEA or consortium.

(b) These are intended as small stipends for educators who are already employed in rural districts to help support arts education and the implementation of BTSALP.

(2) An applicant shall explain:

(a) how an arts coordinator will be used, consistent with the BTSALP model;

(b) what requirements an arts coordinator must meet; and

(c) what training will be provided, and by whom.

(3) The Superintendent shall notify an LEA that receives a grant award no later than June 1 annually.

R277-490-8. Endowed University Participation in the BTSALP.

(1) The Superintendent may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

(2) An endowed university may apply for grant funds to fulfill the purposes of this program, which include:

(a) delivery of high quality professional development to participating LEAs;

(b) the design and completion of research related to the program;

(c) providing the public with elementary arts education resources; and

(d) other program related activities as may be included in a grant application and approved by the Board.

(3) An endowed university grant application shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs.

(4) The Superintendent shall determine the LEAs assigned to each endowed university.

(5) The Board may award no more than 10% of the total legislative appropriation for grants to endowed universities.

(6) The Superintendent shall monitor the activities of the grantees to ensure compliance with grant rules, fulfillment of grant application commitments, and appropriate fiscal procedures.

(7) An endowed university shall cooperate with the Superintendent in the monitoring of its grant.

(8) An endowed university that receives grant funds shall consult, as requested by the Superintendent, in the development and presentation of an annual written program report as required in statute.

R277-490-9. LEAs Cooperation with the Superintendent for BTSALP.

(1) A BTSALP staff member may visit a school receiving a grant to observe implementation of the grant.

(2) A BTSALP school shall cooperate with the Superintendent to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.

(3) An LEA shall accurately report the number of students impacted by the program grant and report on the delivery systems to those students as requested by the Superintendent.

(4)(a) An LEA found to be out of compliance with the terms of the grant will be notified within 30 days of the discovery of non-compliance.

(b) An LEA found to be in non-compliance will be given 30 days to correct the issues.

(c) If non-compliance is not resolved within that time frame, an LEA is subject to losing the grant funds for the school or schools found to be non-compliant.

KEY: arts programs, endowed universities, grants, public schools

August 11, 2016 **Art X Sec 3**
Notice of Continuation June 10, 2013 **53A-1-401**
53A-17a-162

R277. Education, Administration.
R277-511. Academic Pathway to Teaching (APT) Level 1 License.
R277-511-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-104, which allows the board by rule, to rank, endorse, or otherwise to:

(i) classify licenses; and

(ii) establish the criteria for an educator to obtain or retain a license; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide standards and procedures:

(a) for an applicant to obtain an Academic Pathway to Teaching (APT) level 1 license; and

(b) for an APT level 1 license holder to obtain a level 2 license.

R277-511-2. Definitions.

(1)(a) "APT level 1 license" means a license obtained through the academic path to teaching process as described in this rule.

(b) "APT level 1 license" includes:

(i) an APT level 1 license with an Elementary (K-6) Concentration; and

(ii) an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(2) "LEA administrator" means a school building principal or LEA administrator who:

(i) supervises an APT level 1 licensee; and

(ii) may recommend the APT level 1 licensee for Level 2 licensure to the Superintendent as described in Section R277-511-6.

(3) "Master teacher" means a level 2 or level 3 licensed teacher designated as a master teacher by an LEA through the demonstration of consistent leadership, focused collaboration, distinguished teaching, and continued professional growth.

R277-511-3. Superintendent Responsibilities.

(1) The Superintendent shall create an application for an APT level 1 license and publish the application on the Board's website.

(2) The Superintendent shall approve an application for an APT level 1 license if the applicant meets all of the requirements of Section R277-511-4 or Section R277-511-5.

R277-511-4. Requirements for an APT Level 1 License with an Elementary (K-6) Concentration.

(1) To qualify for an APT level 1 license with an Elementary (K-6) Concentration, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on the Elementary Education: Multiple Subjects Praxis Assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) An APT level 1 license with an Elementary (K-6) Concentration is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

R277-511-5. Requirements for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(1) To qualify for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on one of the following that is related to the subject, field, or area to which they are seeking an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement:

(i) a Praxis II Subject Assessment; or

(ii) another Board-approved content knowledge assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) Except as provided in Subsection (3), an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

(3) An APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement holder may only seek an additional endorsement after the APT Level 1 License with a Secondary (6-12) Concentration holder obtains a level 2 license.

R277-511-6. Requirements for an LEA that Employs an APT Level 1 License Holder.

If an LEA employs an APT level 1 license holder, the LEA shall:

(1) assign a master teacher to serve as a mentor to the APT level 1 license holder; and

(2) prepare the APT level 1 license holder to meet the Utah Effective Educator Standards described in R277-530-5.

R277-511-7. Requirements for an APT Level 1 License Holder to Gain a Level 2 License.

(1) To receive a Level 2 license, an APT level 1 license holder shall:

(a)(i) complete three years of teaching full-time under supervision of the master teacher mentor and LEA administrator; or

(ii) complete four years of at least 0.4 FTE teaching under the supervision of a master teacher mentor and the LEA administrator;

(b) satisfy all Entry Years Enhancement for Quality Teaching requirements designated in R277-522;

(c) complete any additional requirements of the recommending LEA, including coursework and professional learning that the recommending LEA requires;

(d) complete the educator ethics review on the Board's website;

(e) renew the educator's background check as required in R277-516; and

(f) obtain a recommendation from:
(i) the master teacher mentor; and
(ii) the LEA administrator; and
(g) pay applicable licensing fees.

(2)(a) An APT level 1 license holder seeking a level 2 license may request a one year extension of the APT level 1 license at the recommendation of the master teacher mentor and the LEA Administrator up to a maximum of two one-year extensions.

(b) Unless required by the recommending LEA, the years of teaching in Subsection (1)(a) do not need to be consecutive.

KEY: Academic Pathway to Teaching, educator licensure
August 12, 2016 **Art X Sec 3**
53A-6-104
53A-1-401

R277. Education, Administration.
R277-515. Utah Educator Professional Standards.
R277-515-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board;

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;

(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and

(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-2. Definitions.

(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) A "boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting with students in rooms with covered or blocked windows;

(iii) telling risqué jokes to, or in the presence of a student;

(iv) employing favoritism to a student;

(v) giving gifts to individual students;

(vi) educator initiated frontal hugging or other uninvited touching;

(vii) photographing individual students for a non-educational purpose or use;

(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;

(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(x) interacting privately with a student through social media, computer, or handheld devices; and

(xi) discussing an educator's personal life or personal issues with a student.

(c) "Boundary violations" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.

(2) "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53A-1-402.

(3) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

(4)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

(5) "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

(6) Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8) "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.

(9) "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code.

(10) "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

(11) "School-related activity" means any event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.

(12) "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

(13) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established by Section 53A-6-301.

(14) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

(1) The professional educator is responsible for compliance with federal, state, and local laws.

(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.

(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline.

(4) The professional educator, upon receiving a Utah

educator license:

(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;

(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(c) may not commit any act of cruelty to a child or any criminal offense involving a child;

(d) may not be convicted of a stalking crime;

(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;

(f) may not engage in conduct of a sexual nature described in Section 53A-6-405;

(g) may not be subject to a diversion agreement specific to a sex-related or drug-related offense, plea in abeyance, court-imposed probation, or court supervision related to a criminal charge that could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;

(i) may not attend school or a school-related activity in an assigned supervisory capacity while possessing, using, or under the influence of alcohol or an illegal drug;

(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;

(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;

(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;

(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(o) may not engage in grooming of a student or minor;

(p) may not:

(i) participate in sexual, physical, or emotional harassment towards any public school-age student or colleague; or

(ii) knowingly allow harassment toward a student or colleague;

(q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;

(r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;

(s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;

(t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;

(u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;

(v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;

(w) shall notify the Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;

(x) shall notify the Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

(y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel.

(5) An LEA shall report violations described in Subsection (4) to UPPAC.

(6)(a) Failure to adhere to this Subsection (6) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) An educator may not:

(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and

(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection (6)(c)(i) or any other, consistent with the law.

(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:

(i) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and rule, a professional educator:

(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student where there may be the appearance of a conflict of interest or impropriety;

(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;

(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;

(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;

(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(vi) may not use the educator's position or influence to:

(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or

(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless

approved in writing consistent with LEA policy and rule; and

(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.

(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline.

(b) The professional educator, upon receiving a Utah educator license:

(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;

(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53A-1-608 and Rule R277-404;

(B) shall cooperate in good faith with a required student assessment;

(C) shall submit and include all required student information and assessments, as required by statute and rule; and

(D) shall attend training and cooperate with assessment training and assessment directives at all levels;

(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility; and

(vii) may not knowingly possess, while at school or any school-related activity, any pornographic material in any form.

(3) An LEA shall report violations of Subsection (2) to UPPAC.

(4)(a) Failure to adhere to this Subsection (4) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) A professional educator:

(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad spectrum of school and community sources, including a community whose heritage language is not English;

(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

(iii) shall maintain a positive and safe learning environment for a student;

(iv) shall make appropriate use of technology by:

(A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;

(B) maintaining separate professional and personal virtual profiles;

(C) respecting student privacy on social media; and

(D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;

(v) shall work toward meeting an educational standard required by law;

(vi) shall teach the objectives contained in a Core Standard;

(vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;

(viii) shall use instructional time effectively consistent with LEA policy; and

(ix) shall encourage a student's best effort in an assessment.

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

(1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline.

(b) A professional educator:

(i) understands, respects, and does not violate appropriate boundaries:

(A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and

(B) described in Subsection R277-515-2(1); and

(ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.

(2) An LEA shall report violations of Subsection (1) to UPPAC.

(3)(a) Failure to adhere to this Subsection (3) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) understands and follows a rule and LEA policy;

(ii) understands and follows a school or administrative policy or procedure;

(iii) resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and

(iv) follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

(1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.

(2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;

(ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;

(iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;

(iv) shall express a personal opinion professionally and

responsibly in the community served by the school;

(v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;

(vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

(vii) shall honor all contracts for a professional service;

(viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and

(ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.

R277-515-7. Violations of Professional Ethics.

(1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.

(2)(a) Beginning in the 2017-18 school year, every active licensed educator shall review this rule and annually execute a form approved by the Superintendent verifying that the educator:

(i) has read R277-515 and R277-516; and

(ii) understands that the educator's conduct is governed by R277-515 and R277-516.

(b) Failure to submit the form identified in Subsection (a) by September 30 may result in licensing discipline.

(3) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.

(4) The Board and Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.

(5) Reporting and employment provisions related to professional ethics are provided in:

(a) Section 53A-15-1507;

(b) Section 53A-6-501;

(c) Section 53A-11-403; and

(d) Section R277-516-7.

KEY: educators, professional, standards
August 12, 2016 **Art X Sec 3**
Notice of Continuation November 15, 2012 **53A-1-402(1)(a)**
53A-6
53A-1-401

R277. Education, Administration.
R277-516. Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members.
R277-516-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b)(i) Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the Superintendent to perform duties assigned by the Board that include:

(ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:

(A) investigation of all matters pertaining to the public schools; and

(B) statistical and financial information about the school system which the Superintendent considers pertinent;

(c) Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:

(i) establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and

(ii) the evaluation of instructional personnel; and

(d) Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

(2) The purpose of this rule is ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-516-2. Definitions.

(1) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

(2) "Charter school board member" means a current member of a charter school governing board.

(3) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information;

(f) completion of employee background checks; and

(g) a record of disciplinary action taken against the educator.

(4) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

(5) "DPS" means the Department of Public Safety.

(6) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(7)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, Board employees, and school district specialists).

(b) A licensed educator may or may not be employed in a position that requires an educator license.

(c) A licensed educator includes an individual who:

(i) is student teaching;

(ii) is in an alternative route to licensing program or position; or

(iii) holds an LEA-specific competency-based license.

(8) "Non-licensed public education employee" means an employee of a an LEA who:

(a) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

(b) is a contract employee.

(9) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

(10) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

(11) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

(1) A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(a) any matters involving an alleged sex offense;

(b) any matters involving an alleged drug-related offense;

(c) any matters involving an alleged alcohol-related offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(f) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (a) through (f).

(2) A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

(3) An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

(4) The Superintendent shall develop an electronic reporting process on the Board's website.

(5) A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

(1) An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board

member background checks that includes at least the following components:

(a) a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

(2) An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

(1) An LEA shall have a policy requiring a non-licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).

(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.

(3) An LEA's policy described in Subsection (1) shall include the following minimum components:

(a) reporting of the following:

(i) convictions, including pleas in abeyance and diversion agreements;

(ii) any matters involving arrests for alleged sex offenses;

(iii) any matters involving arrests for alleged drug-related offenses;

(iv) any matters involving arrests for alleged alcohol-related offenses; and

(v) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(b) a timeline for receiving reports from non-licensed public education employees;

(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(e) adequate due process for the accused employee consistent with Section 53A-15-1506;

(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

(4) An LEA shall ensure that the records described in R277-516-5(3)(g):

(a) include final administrative determinations and actions following investigation; and

(b) are maintained:

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-516-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53A-6-501, Rule R277-515, and the LEA's policy.

(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(a) considering the individual's assignment and duties; and

(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

R277-516-7. Misconduct Notification Requirements and Procedures.

(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to:

(i) law enforcement;

(ii) the school principal; and

(iii) to any other entity to which a report is required by law.

(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.

(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, or internal LEA investigation, to have had disciplinary action taken for, or, to have engaged in:

(a) unprofessional conduct or professional incompetence that:

(i) results in suspension for more than one week or termination;

(ii) requires mandatory licensing discipline under R277-515; or

(iii) otherwise warrants UPPAC review; or

(b) immoral behavior.

(3) An educator who fails to comply with Subsection (1) may:

(a) be found guilty of unprofessional conduct; and

(b) have disciplinary action taken against the educator.

(4) The Superintendent may withhold, reduce, or terminate funding to an LEA for failure to make a required report under R277-516 through the process described in Rule R277-114.

KEY: school employees, self reporting

August 12, 2016 **Art X Sec 3**

Notice of Continuation June 10, 2014 **53A-1-301(3)(a)**
53A-1-301(3)(d)(x)
53A-1-402(1)(a)(i)
53A-1-402(1)(a)(iii)

R277. Education, Administration.
R277-530. Utah Effective Teaching and Educational Leadership Standards.
R277-530-1. Definitions.

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

B. "Local education agency (LEA)" means a Utah school district or charter school.

C. "Promises to Keep" is the Board's statement of vision and mission for Utah's system of public education. Utah's public education system keeps its constitutional promise by ensuring literacy and numeracy for all Utah children, providing high quality instruction for all Utah children, establishing curriculum with high standards and relevance for all Utah children, and requiring effective assessment to inform high quality instruction and accountability.

D. "School administrator" means an educator serving in a position that requires a Utah Educator License with an Administrative area of concentration and who supervises Level 2 educators.

E. "Teacher" for purposes of this rule means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

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

R277-530-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Sections 53A-1-402(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services, and 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 establish statewide effective teaching standards for Utah public education teachers and to establish statewide educational leadership standards for Utah public education administrators consistent with the Board's supervision of the public education system under Utah Constitution Article X, Section 3 and supports one pillar of the Board's Promises to Keep - high quality instruction for all Utah children.

R277-530-3. USOE Responsibilities for Effective Teaching and Educational Leadership Standards.

A. The Board shall use the Effective Teaching Standards and Educational Leadership Standards as the foundation of educator development that includes alignment of teacher and school administrator preparation programs, expectations for licensure, and the screening, hiring, induction, and mentoring of beginning teachers and school administrators.

B. The Board shall use the Effective Teaching Standards and Educational Leadership Standards to direct and ensure the implementation of the Utah Common Core Standards.

C. The Board shall rely on the Effective Teaching Standards and Educational Leadership Standards as the basis for an evaluation system and tiered-licensing system.

D. The Board shall develop a model educator assessment system for use by LEAs based on the Effective Teaching Standards and Educational Leadership Standards.

E. The Board shall provide resources, including professional development, that assist LEAs in integrating the Effective Teaching Standards and Educational Leadership Standards into educator practices.

R277-530-4. LEA Responsibilities for Effective Teaching Standards and Educational Leadership Standards.

A. LEAs shall develop policies to support teachers and school administrators in implementation of the Effective Teaching and Educational Leadership Standards.

B. LEAs shall develop professional learning experiences and professional learning plans for relicensure using the Effective Teaching and Educational Leadership Standards to assess educator progress toward implementation of the standards.

C. LEAs shall adopt formative and summative educator assessment systems based on the Effective Teaching and Educational Leadership Standards to facilitate educator growth toward expert practice.

D. LEAs shall use the Effective Teaching and Educational Leadership Standards as a basis for the development of a collaborative professional culture to facilitate student learning.

E. LEAs shall implement induction and mentoring activities for beginning teachers and school administrators that support implementation of the Effective Teaching Standards and Educational Leadership Standards.

R277-530-5. Effective Teaching Standards.

A. The Board document, Promises to Keep, identifies the development and retention of teachers who have the skills and knowledge to provide effective, high quality instruction to all of Utah's students as one of four essential promises between the Board and the public education community. The Utah Effective Teaching Standards describe what effective teachers must know and be able to do to fulfill the Board's constitutional promise. The Effective Teaching Standards focus on the high-leverage concepts of personalized learning for diverse learners, a stronger focus on application of knowledge and skills, improved assessment literacy, a collaborative professional culture, and new leadership roles for teachers.

B. Effective Teaching Standards - Utah teachers shall demonstrate the following skills and work functions designated in the following ten standards:

(1) Learner Development - A teacher understands cognitive, linguistic, social, emotional, and physical areas of student development.

(2) Learning Differences - A teacher understands individual learner differences and cultural and linguistic diversity.

(3) Learning Environments - A teacher works with learners to create environments that support individual and collaborative learning, encouraging positive social interaction, active engagement in learning, and self motivation.

(4) Content Knowledge - A teacher understands the central concepts, tools of inquiry, and structures of the discipline.

(5) Assessment - A teacher uses multiple methods of assessment to engage learners in their own growth, monitor learner progress, guide planning and instruction, and determine whether the outcomes described in content standards have been met.

(6) Instructional Planning - A teacher plans instruction to support students in meeting rigorous learning goals by drawing upon knowledge of content areas, core curriculum standards, instructional best practices, and the community context.

(7) Instructional Strategies - A teacher uses various instructional strategies to ensure that all learners develop a deep understanding of content areas and their connections, and build skills to apply and extend knowledge in meaningful ways.

(8) Reflection and Continuous Growth - A teacher is a reflective practitioner who uses evidence to continually evaluate and adapt practice to meet the needs of each learner.

(9) Leadership and Collaboration - A teacher is a leader

who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success.

(10) Professional and Ethical Behavior - A teacher demonstrates the highest standards of legal, moral, and ethical conduct as specified in R277-515.

R277-530-6. Educational Leadership Standards.

A. The Board document, Promises to Keep, expects that school administrators shall meet the standards of effective teaching and have the knowledge and skills to guide and supervise the work of teachers, lead the school learning community, and manage the school's learning environment in order to provide effective, high quality instruction to all of Utah's students. The Educational Leadership Standards focus on visionary leadership, advocacy for high levels of student learning, leading professional learning communities, and the facilitation of school and community collaboration.

B. In addition to meeting the standards of an effective teacher, school administrators shall demonstrate the following traits, skills, and work functions designated in the following six standards:

(1) Visionary Leadership - A school administrator promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by all stakeholders.

(2) Teaching and Learning - A school administrator promotes the success of every student by advocating, nurturing and sustaining a school focused on teaching and learning conducive to student, faculty, and staff growth.

(3) Management for Learning - A school administrator promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment.

(4) Community Collaboration - A school administrator promotes the success of every student by collaborating with faculty, staff, parents, and community members, responding to diverse community interests and needs and mobilizing community resources.

(5) Ethical Leadership - A school administrator promotes the success of every student by acting with, and ensuring a system of, integrity, fairness, equity, and ethical behavior.

(6) Systems Leadership - A school administrator promotes the success of every student by understanding, responding to, and influencing the interrelated systems of political, social, economic, legal, policy, and cultural contexts affecting education.

KEY: educators, effectiveness, leadership, standards
October 11, 2011 Art X Sec 3
Notice of Continuation August 15, 2016 53A-1-402(1)(a)(i)
53A-1-401(3)

R277. Education, Administration.
R277-531. Public Educator Evaluation Requirements (PEER).
R277-531-1. Definitions.

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

B. "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

C. "Educator Evaluation Program" means a school district's process, policies and procedures for evaluating educators' performance according to their various assignments; those policies and procedures shall align with R277-531.

D. "Formative evaluation" means evaluations that provide educators with information and assessments on how to improve their performance.

E. "Instructional quality data" means data acquired through observation of educator's instructional practices.

F. "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a school district evaluation program.

G. "School administrator" means an educator serving in a position that requires a Utah Educator License with an Administrative area of concentration and who supervises Level 2 educators.

H. "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.

I. "Summative evaluation" means evaluations that are used to make annual decisions or ratings of educator performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

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

K. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

L. "Utah Effective Teaching Standards" means the teaching standards identified and provided in R277-530.

M. "Utah Educational Leadership Standards" means the standards for educational leadership identified and adopted in R277-530.

N. "Valid and reliable measurement tool(s)" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Sections 53A-1-402(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services, Section 53A-8a-301 which directs that the Board adopt rules to guide school district employee evaluations, and 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 a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness. The process shall focus on the improvement of high quality instruction and improved student achievement. Additionally, the process shall include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, improved professional development practices and ensure school districts engage in a consistent process statewide of educator evaluation.

R277-531-3. Public Educator Evaluation Framework.

A. The Board shall provide a framework that includes five general evaluation system areas and additional discretionary components required in a school district's educator evaluation system no later than the 2015-2016 school year.

B. A school district shall align its evaluation policies with Board standards:

(1) A school district educator evaluation system shall be based on rigorous performance expectations aligned with R277-530.

(2) A school district evaluation system shall establish and articulate performance expectations individually for all licensed school district educators.

(3) A school district evaluation system shall use valid and reliable measurement tools including, at a minimum:

(a) observations of instructional quality;

(b) evidence of student growth;

(c) parent and student input; and

(d) other indicators as determined by the school district.

(4) A school district evaluation system shall provide a summative yearly rating of educator performance using uniform statewide terminology and definitions. A school district evaluation system shall include summative and formative components.

(5) A school district evaluation system shall direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System.

(6) A school district evaluation system shall use valid, reliable and research-based measurement tool(s) for all educator evaluations. Such measurements shall:

(a) employ a variety of measurement tools;

(b) adopt differentiated methodologies for measuring student growth for educators in subject areas for which standardized tests are available and in subject areas for which standardized tests are not available;

(c) provide evaluation for non-instructional licensed educators and administrators; and

(d) provide both formative and summative evaluation data.

C. A school district may consider data gathered from tools to inform decisions about employment and professional development.

D. A school district shall discuss, collaborate and protect the confidentiality of educator data in the evaluation process:

(1) a school district evaluation system shall provide for clear and timely notice to educators of the components, timelines and consequences of the evaluation process;

(2) a school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in R277-501 and evaluation conferences; and

(3) a school district evaluation system shall protect personal data gathered in the evaluation process.

E. School district plans shall provide support for instructional improvement.

(1) A school district evaluation system shall assess professional development needs of educators.

(2) A school district evaluation system shall identify educators who do not meet expectations for instructional quality and provide support as appropriate at the school district level which may include providing educators with mentors, coaches, specialists in effective instruction and

setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

F. A school district evaluation system shall maintain records and documentation of required educator evaluation information.

(1) A school district evaluation system shall require the evaluation of all licensed educators at least once a year.

(2) A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(3) A school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the school district under Section 53A-8a-405, at least twice yearly.

(4) A school district evaluation system shall include the following specific educator performance criteria:

(a) school district-determined instructional quality measures;

(b) complete integration of student growth score before July 1, 2016; and

(c) other measures as determined by the school district, including data required from student/parent input.

(5) The Board shall determine weightings for specific educator performance criteria to be used in the school district's evaluation system.

(6) A school district evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

(7) A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(8) A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

G. A school district may include additional components in its evaluation system.

H. A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board for review and approval.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

A. The Board shall establish a state evaluation advisory committee to provide ongoing review and support for school districts as they develop and implement evaluation systems consistent with the law and this rule. The Committee shall:

(1) analyze school district evaluation data for purposes of:

(a) reporting;

(b) assessing instructional improvement; and

(c) assessing student achievement.

(2) review required Board evaluation components regularly and evaluate their usefulness in providing a consistent statewide framework for educator evaluation, instructional improvement and commensurate student achievement; and

(3) review school district educator evaluation plans for alignment with Board requirements.

B. The USOE, under supervision of the Board, shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

C. The USOE shall evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems.

D. The USOE shall provide professional development and technical support to school districts to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.

R277-531-5. Implementation.

A. Each school district shall have an educator evaluation committee in place.

B. Each school district shall design the required evaluation program, including pilot programs as desired.

C. Each school district shall continue to report educator effectiveness data to the USOE in the UCA.

D. Each school district shall implement an evaluation system no later than the 2015-2016 school year.

E. A school district shall implement an employee compensation system no later than the 2016-2017 school year that is aligned with the school district's wage or salary schedule and is consistent with the provisions of Section 53A-8a-601(2).

F. Each school district shall implement student growth measures as part of the school district evaluation system before the 2015-2016 school year.

KEY: educators, evaluations, requirements
October 9, 2014 Art X Sec 3
Notice of Continuation August 15, 2016 53A-1-402(1)(a)(i)
53A-1-401(3)

R277. Education, Administration.
R277-533. District Educator Evaluation Systems.
R277-533-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Title 53A, Chapter 8a, Part 4, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) specify the requirements for district Educator Evaluation Systems Policies;

(b) describe the required components of district Educator Evaluation Systems; and

(c) establish requirements for how the Annual Summative Educator Evaluation Rating shall be computed and reported.

R277-533-2. Definitions.

(1) "Attribute" means the process of linking the results of student growth and learning to a specific educator or group of educators using the same SLO.

(2) "Evaluator" means a person who is responsible for an educator's overall evaluation, including:

(a) professional performance;

(b) student growth;

(c) stakeholder input; and

(d) other indicators of professional improvement.

(3) "PEER Committee" means the Public Educator Evaluation Requirements Committee established by the Superintendent.

(4) "Rater" means a person who conducts an observation of an educator related to an educator's evaluation.

(5) "School district" includes the Utah Schools for the Deaf and the Blind.

(6) "Student learning objective" or "SLO" means a content and grade or course specific measurable learning objective that can be used to document student learning over a defined period of time.

(7) "System" means a school district's educator evaluation system.

R277-533-3. School District Educator Evaluation Systems.

(1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53A-8a-403.

(2) A district educator evaluation system shall:

(a) include the components required in Section 53A-8a-405;

(b) include the following four differentiated levels of performance:

(i) highly effective;

(ii) effective;

(iii) emerging/minimally effective; and

(iv) not effective;

(c) use multiple lines of evidence in evaluation, including:

(i) professional performance, as described in Section R277-533-4;

(ii) student growth, as described in Section R277-533-5;

(iii) stakeholder input, as described in Section R277-533-5; and

(iv) other indicators of professional improvement as required by the school district;

(d) require regular conferences between an educator and an evaluator;

(e) provide a process for an educator to contribute additional information to inform the educator's evaluation at several intervals throughout the process;

(f) measure an educator's professional performance when the educator is working in a professional capacity with students, parents, colleagues, or community members;

(g) provide a process for an educator to:

(i) analyze stakeholder input, including input from parents, students, or teachers;

(ii) analyze data related to performance; and

(iii) develop appropriate responses to the information;

(h) provide a procedure to include an educator's response to stakeholder data in the rating calculation;

(i) include a process for an evaluator to give an educator specific, measurable, actionable, and written direction regarding an educator's needed improvement and recommended course of action;

(j) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:

(i) Subsection 53A-8a-406(3); and

(ii) Section R277-533-8;

(k) include multiple observations as described in Section R277-533-4; and

(l) provide a description of the methods for gathering, using, and protecting educator data.

(3) To form the school district's system, a local school board may adopt:

(a) the Utah Model Educator Evaluator System established by the Board;

(b) an adapted system; or

(c) a school district-developed system evaluated by the PEER Committee, consistent with Rules R277-530, R277-531, and this rule.

(4) The PEER Committee, as described in Rule R277-531, shall review and evaluate a school district's educator effectiveness system including:

(a) professional performance;

(b) rater-reliability;

(c) student growth; and

(d) stakeholder input.

(5) The PEER Committee shall review and evaluate a school district's system.

(6) An educator is responsible for:

(a) improving the educator's performance, using resources offered by the school district; and

(b) demonstrating acceptable levels of improvement in any designated area of deficiency.

R277-533-4. Evaluators and Standards for Education Observations.

(1) A school district's system shall include observations.

(2) The school district shall use observation tools that:

(a) are aligned with the Utah Effective Educator Standards described in Rule R277-530 at the indicator level; and

(b) include multiple observations at appropriate intervals.

(3) A school district's evaluation system shall:

(a) include an orientation for all educators conducted by the principal or designee as required in Section 53A-8a-404;

(b) include multiple observation items;

(c) a final rating for each observation item described in Subsection (3)(b); and

(d) include an opportunity for an educator to contribute additional information to inform their rating at several

intervals throughout the process.

(4) To ensure a valid evaluation system, a school district shall provide professional development opportunities to all raters and evaluators of licensed educators to:

(a) improve a rater or evaluator's abilities; and

(b) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(5) A school district shall establish a school district rater reliability plan.

(6) A school district rater reliability plan shall:

(a) require school district to compare a rater's decisions to standardized ratings established by a committee of expert raters;

(b) require a school district to measure a rater's skills and reassess the rater's skills at appropriate intervals to maintain system quality;

(c) designate qualified raters as certified;

(d) assure that an educator is rated by a certified rater;

(e) require a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and

(f) maintain high standards of rater accuracy.

R277-533-5. Student Growth Calculations and Stakeholder Input.

(1) A Utah educator's contribution to a student's growth and learning shall be measured using SLOs.

(2) A school district shall attribute an SLO to an educator as part of an educator's evaluation in accordance with the school district's system policies.

(3) A school district shall:

(a) ensure that an SLO described in Subsection (1) includes:

(i) three required components:

(A) learning goals;

(B) assessments; and

(C) targets; and

(ii) learning goals for an educator linked to the appropriate specific content knowledge and skills from the Utah Core Standards;

(b) provide professional development to an educator for the educator to gain the knowledge and skills necessary to sustain wide-scale implementation of an SLO process;

(c) establish a local review process to assist the school district in developing comparability and consistency of SLOs at each grade level or span; and

(d) design a structure and process for providing professional development to the school district's educators and administrators.

(4)(a) A school district's system shall include a component for stakeholder input for educators, principals, and administrators, which includes annual input from students and parents.

(b) In addition to the stakeholder input described in Subsection (4)(a), stakeholder input for principals and other administrators shall include input from teachers and support professionals.

(c) A school district may attribute stakeholder input to an educator, principal, or other administrator if the data gathered for the stakeholder input is gathered using:

(i) appropriate methods of gathering data as described in the school district's system plan; and

(ii) quality practices.

(5) A school district's system shall:

(a) allow an educator to have an opportunity to respond to stakeholder input; and

(b) consider an educator's response described in Subsection (5)(a) as part of the educator's final rating.

R277-533-6. Computing the Annual Summative Rating.

(1) A school district shall base an educator's component ratings on:

(a) actual observations of the educator's performance; and

(b) educator, evaluator, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.

(2) A school district shall combine an educator's component ratings using the following formula:

(a) 70% for professional performance;

(b) 20% for student growth; and

(c) 10% for stakeholder input.

(3) A school district shall report summative scores annually for all educators using the following approved terminology for reporting:

(d) highly effective 3;

(c) effective 2;

(b) minimal/emerging effective 1; and

(a) not effective 0.

R277-533-7. Minimal or Emerging Effective Category.

If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:

(1) designate an educator as emerging effective if:

(a) the educator:

(i) holds a Level 1 educator license; or

(ii) is being served by the school district's Entry Years Enhancement (EYE) program described in Rule R277-522; or

(b) the educator:

(i) received a new or different teaching or leadership assignment within the last school year; or

(ii) is developing in that area; or

(2) designate an educator as minimally effective if the educator:

(a) holds a Level 2 educator license; and

(b) is teaching or leading in a familiar assignment.

R277-533-8. Evaluation Reviews.

(1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.

(2) A school district shall conduct a review of an educator's summative evaluation:

(a) as described in this section; and

(b) the requirements of Section 53A-8a-406.

(3) A review described in Subsection (2) shall be conducted:

(a) by a certified rater:

(i) with experience evaluating educators; and

(ii) not employed by the school district; and

(b) in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(4) A certified rater described in Subsection (3) shall:

(a) review:

(i) the school district's educator evaluation policies and procedures;

(ii) the evaluation process conducted for the educator; and

(iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and

(b) report the certified rater's findings, in writing, to the school district's superintendent for action.

(5) The school district shall determine if the initial educator evaluation was issued in accordance with:

(a) the school district's educator evaluation policies;
(b) the requirements of the performance standards;
(c) Title 53A, Chapter 8a, Public Education Human Resource Management Act;
(d) Rule R277-531; and
(e) this rule.

R277-533-9. Educator Evaluation Data.

(1) A school district shall report to the Board annually on or before June 30 the information necessary for the Board to make the report required by Section 53A-8a-410.

(2) A school district shall maintain confidential records of the educator effectiveness component data of individual educators in accordance with:
(a) Rule R277-487; and
(b) state law.

(3) A school district's system may be monitored by the Board.

KEY: educators, evaluations
August 11, 2016 **Art X, Sec 3**
53A-1-401

R277. Education, Administration.
R277-710. Intergenerational Poverty Interventions in Public Schools.
R277-710-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53A-17a-171(4), which directs the Board to accept proposals and award grants under the program.

(2) The purpose of this rule is:

(a) to provide for distribution of funds to LEAs; and

(b) to provide for out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success.

(3) This rule provides eligibility criteria, provides minimum application criteria, provides timelines, and provides for Superintendent oversight and reporting.

R277-710-2. Definitions.

(1) "Eligible student" means a student in grades k-12 of the public school system who is classified as a child affected by intergenerational poverty.

(2)(a) "Intergenerational poverty (IGP)" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependence.

(b) "Intergenerational poverty" does not include situational poverty as defined in Section 35A-9-102.

(3) "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day (after school program).

R277-710-3. Grant Eligibility.

(1) Only LEAs are eligible to apply for funds under the program.

(2) An LEA, in designing the LEAs program services, may collaborate with a community-based organization that provides quality after school programs.

(3) The Board shall give priority to applicants that have a significant number or percentage of students affected by intergenerational poverty.

(4) Program funds are intended to provide supplemental services beyond what is already available through state and local funding.

(a)(i) For an LEA with a school that has an existing after school program, the program funds may be used to augment the amount or intensity of services to benefit students affected by IGP.

(ii) A program applicant that has an existing after school program may apply for a grant in the range of $30,000 to $50,000 per school year.

(b)(i) For an LEA with a school that does not have an existing after school program, the program funds may be used to establish a quality after school program.

(ii) A program applicant without an existing after school program may apply for grants in the range of $100,000-$150,000 per school year.

(5) An LEA that participates in the program and serves students in grades k-6 may be eligible to apply for additional federal after school funding through the Department of Workforce Services.

R277-710-4. Program Requirements.

An applicant for a program grant shall design a program that includes the following minimum components:

(1) a description of the level of administrative support and leadership at the LEA to effectively implement, monitor, and evaluate the program;

(2) an explanation of how the LEA will provide adequate supervision and support to successfully implement or increase programs at the school level;

(3) a summary of a needs assessment conducted by the LEA to determine the academic needs and interests of participating students and their families;

(4) the identification of intended outcomes of the program and how these outcomes will be measured;

(5) an explanation of how the LEA or school will provide services to improve the academic achievement of children affected by intergenerational poverty;

(6) a commitment to assess program quality and effectiveness and make changes as needed;

(7) an outline of the scope of services, including days of the week, number of hours, and number of weeks;

(8) an explanation of the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students;

(9) an explanation of how the LEA will work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA's eligible students;

(10) the identification of IGP eligible students categorized by age, and schools in which the LEA plans to develop programs with the grant money;

(11) an annual program budget and identification of the estimated cost per student; and

(12) establishment and maintenance of data systems that inform program decisions and annual reporting requirements.

R277-710-5. Application Process.

(1) The Superintendent shall solicit competitive grant applications from LEAs, score the applications, and make funding recommendations to the Board.

(2) An LEA may apply for a grant through the Utah Consolidated Application (UCA).

(3)(a) The Superintendent shall convene a panel of application reviewers who demonstrate no conflicts of interest.

(b) The panel reviewers shall score applications and the panel shall make recommendations for funding to the Board.

(4) In a year when there is a grant competition:

(a) the application deadline is June 16;

(b) the application review shall be completed by June 23;

(c) the Superintendent shall provide recommendations of grant applicants to the Board no later than July 1; and

(d) the Superintendent shall notify grant recipients no later than August 5.

(5) The Superintendent, in future years, subject to continuing appropriations, may adjust the time periods and create applicable timelines to allow LEAs more time to propose programs and complete applications.

R277-710-6. Superintendent Oversight and Reporting Requirements.

(1) The Superintendent shall provide adequate oversight in the administration of the IGP program to include:

(a) conducting the annual application process and awarding funds;

(b) monitoring program implementation; and

(c) gathering and reporting required data.

(2) To effectively administer the IGP program, the Superintendent shall reserve up to 5% of the appropriation for the program for administrative and evaluation purposes.

(3) An LEA that receives program grant money shall

annually provide to the Superintendent the information that is necessary for the Board's report to the Utah Intergenerational Welfare Reform Commission as required by Subsection 53A-17a-171(7).

(4) The annual report required under Subsection 53A-17a-171(7) shall include:

(a) the progress of LEA programs in expending grant money;

(b) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and

(c) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.

KEY: public schools, poverty, intervention
August 11, 2016 **Art X Sec 3**
53A-1-401

R277. Education, Administration.
R277-713. Concurrent Enrollment of High School Students in College Courses.
R277-713-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-15-1707, which directs the Board to provide for the distribution of concurrent enrollment dollars in rule.

(2) The purpose of the concurrent enrollment program is to provide a challenging college-level and productive experience in high school, and to provide transition courses that can be applied to postsecondary education.

(3) The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and the criteria for funding appropriate concurrent enrollment expenditures.

R277-713-2. Definitions.

(1) "Concurrent Enrollment" means a public high school student is enrolled in a course that satisfies both high school graduation requirements and qualifies for higher education credit at a USHE institution.

(2) "Concurrent Enrollment Program" or "Program" means the program created in Section 53A-15-1703 that receives funding in accordance with Section 53A-15-1707, which allows students to participate in concurrent enrollment courses.

(3) "Master course list" means a list of approved courses, maintained by the Superintendent and USHE, which may be offered and funded through the concurrent enrollment program.

(4) "USHE" means the Utah System of Higher Education.

R277-713-3. Student Eligibility and Participation.

(1) A student participating in the program shall:

(a) be enrolled in a public high school in the state and counted in average daily membership for that high school, as required in Section 53A-15-1702(4);

(b) have on file at the participating school, a current student SEOP, as defined in Section 53A-1a-106.

(c) have completed a concurrent enrollment participation form, including a parent permission form and acknowledgment of program participation requirements, as required in section 53A-15-1705; and

(d)(i) be enrolled in grade 11 or 12; or

(ii) if allowed by exception, be enrolled in grade 9 or 10, as detailed in Section 53A-15-1703.

(2) Student eligibility requirements for the program shall be:

(a) established by an LEA and a USHE institution; and

(b) sufficiently selective to predict a successful experience for qualified students.

(3) An LEA has the primary responsibility for identifying a student who is eligible to participate in a concurrent enrollment class.

(4) To ensure that a student is prepared for college level work, an LEA shall appropriately evaluate the student's abilities prior to participation in concurrent enrollment courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institution.

R277-713-4. Course Credit and Offerings - Course Approval Process.

(1) Credit earned through a concurrent enrollment course:

(a) has the same credit hour value as when taught on a college campus;

(b) applies toward graduation on the same basis as a course taught at a USHE institution to which the credits are submitted;

(c) generates higher education credit that becomes a part of a student's permanent college transcript;

(d) generates high school credit that is consistent with the LEA policies for awarding credit for graduation; and

(e) is transferable from one USHE institution to another.

(2) A USHE institution is responsible to determine the credit for a concurrent enrollment course, consistent with State Board of Regents policies.

(3) An LEA and a USHE institution shall provide the Superintendent and USHE with proposed new course offerings, including syllabi and curriculum materials, by November 15 of the year preceding the school year in which the courses would be offered.

(4) A concurrent enrollment course shall be approved by the Superintendent and USHE, and designated on the master course list, maintained by the Superintendent and USHE.

(5)(a) Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs.

(b) The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

(6) To provide for the focus of energy and resources on quality instruction in the concurrent enrollment program, program courses shall be limited to courses in:

(a) English;
(b) mathematics;
(c) fine arts;
(d) humanities;
(e) science;
(f) social science;
(g) world languages; and
(h) career and technical education.

(7) A Technology-intensive concurrent enrollment (TICE) course is a hybrid course, having a blend of different learning activities, available both in the classroom and online, or may be delivered exclusively online.

(8) A concurrent enrollment course shall be a course at the 1000 or 2000 level in postsecondary education, except for a 3000-level accelerated foreign language course, which may be approved as a concurrent enrollment course for eligible students.

(9) A concurrent enrollment course may not be approved if it is:

(a) a high school course that is typically offered in grade 9 or 10; or

(b) a postsecondary course below the 1000 level.

(10) The appropriate USHE institution shall take responsibility for course content, procedures, examinations, teaching materials, and program monitoring and all procedures and materials shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on a college or university campus.

R277-713-5. Program Management and Delivery.

(1)(a) Concurrent enrollment courses and curriculum may be provided through live classroom instruction or by other means, including electronic communications.

(b) An LEA and a USHE institution shall design and implement courses to take full advantage of the most

currently available educational technology.

(2) An LEA shall use a Superintendent-designated 11-digit course code for a concurrent enrollment course.

(3) An LEA and a USHE institution shall jointly align information technology systems with all individual student academic achievement data so that student information will be tracked through both education systems consistent with Section 53A-1-603.5.

R277-713-6. Faculty and Educator Requirements.

(1) An educator who is not employed by a USHE institution and teaches a concurrent enrollment course shall:

(a) be employed by an LEA;

(b) have secondary endorsements in each subject area in which they teach; and

(c) have a Level 4 mathematics endorsement if the educator teaches a mathematics concurrent enrollment course.

(2) An educator employed by an LEA who teaches a concurrent enrollment course shall be approved as an adjunct faculty member at the contracting USHE institution prior to teaching the concurrent enrollment course.

(3) High school educators who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department at the USHE institution.

(4) An LEA and a USHE institution shall share expertise and professional development, as necessary, to adequately prepare a teacher to teach in the concurrent enrollment program, including federal and state laws specific to student privacy and student records.

(5) A USHE institution that employs a faculty member who teaches in a high school has responsibility for ensuring and maintaining documentation that the faculty member has successfully completed a criminal background check, consistent with Section 53A-15-1503.

R277-713-7. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

(1) Program funds shall be allocated in accordance with Section 53A-15-1707.

(2) Program funds allocated to LEAs may not be used for any other program or purpose, except as provided in Section 53A-17a-105.5.

(3) Concurrent enrollment funding may not be used to fund a parent- or student-initiated college-level course at an institution of higher education.

(4) The Superintendent may not distribute concurrent enrollment funds to an LEA for reimbursement of a concurrent enrollment course:

(a) that is not on the master course list;

(b) for a student that has exceeded 30 semester hours of concurrent enrollment for the school year;

(c) for a concurrent enrollment course repeated by a student; or

(d) taken by a student:

(i) who has received a diploma;

(ii) whose class has graduated; or

(iii) who has participated in graduation exercises.

(5)(a) An LEA shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed concurrent enrollment hours.

(b) Successfully completed means that a student received USHE credit for the course.

(6) An LEA's use of state funds for concurrent enrollment is limited to the following:

(a) aid in professional development of adjunct faculty in cooperation with the participating USHE institution;

(b) assistance with delivery costs for distance learning programs;

(c) participation in the costs of LEA personnel who work with the program;

(d) student textbooks and other instructional materials;

(e) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407;

(f) purchases by LEAs of classroom equipment required to conduct concurrent enrollment courses; and

(g) other uses approved in writing by the Superintendent consistent with the law and purposes of this rule.

(7) An LEA that receives program funds shall provide the Superintendent with the following:

(a) end-of-year expenditures reports; and

(b) an annual report regarding supervisory services and professional development provided by a USHE institution.

(8) Appropriate reimbursement may be verified at any time by an audit.

R277-713-8. Student Tuition and Fees.

(1) A concurrent enrollment program student may be charged partial tuition and program-related fees, in accordance with Section 53A-15-1706.

(2) Postsecondary tuition and participation fees charged to a concurrent enrollment student are not fees, as defined in R277-407, and do not qualify for a fee waiver under R277-407.

(3)(a) All costs related to concurrent enrollment classes that are not tuition and participation fees are subject to a fee waiver consistent with R277-407.

(b) Concurrent enrollment costs subject to fee waiver may include consumables, lab fees, copying, material costs, and textbooks required for the course.

(4)(a) Except as provided in Subsection (4)(b), an LEA shall be responsible for fee waivers.

(b) An agreement between a USHE institution and an LEA may address the responsibility for fee waivers.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

(1) An LEA and a USHE institution that plan to collaborate to offer a concurrent enrollment course shall enter into an annual contract for the upcoming school year by no later than May 30.

(2) An LEA shall provide the Superintendent a copy of each annual contract entered into between the LEA and a USHE institution for the upcoming school year by no later than May 30.

(3) An LEA and a USHE institution shall use the standard contract language developed by the Superintendent and USHE.

KEY: students, curricula, higher education

August 11, 2016	**Art X Sec 3**
Notice of Continuation August 14, 2012	**53A-1-401**
	53A-1-402(1)(c)
	53A-15-101
	53A-15-101.5
	53A-17a-120.5

R277. Education, Administration.
R277-726. Statewide Online Education Program.
R277-726-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Section 53A-15-1210, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;

(c) Section 53A-15-1213, which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

(d) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using the Superintendent provided Statewide Online Education Program form.

(b) Except as provided in Subsection 53A-15-1208(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(4) "Eligible student" means a student enrolled in grades 9-12 in a public school, but does not include a student enrolled in an adult education program.

(5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).

(6)(a) "Executed CCA" means a CCA that has been signed by all parties and received by Superintendent.

(b) Following enrollment confirmation and participation, Superintendent directs funds to the provider, consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8) "Online course" means a course of instruction offered through the Statewide Online Education Program.

(9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed to the designated provider following satisfaction of the requirements of the law, and as directed in Section 53A-15-1207.

(10) "Online course provider" or "provider" means:

(a) a school district school;

(b) a charter school;

(c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or

(d) a program of an institution of higher education described in Subsection 53A-15-1205(3).

(11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program.

(12) "Primary school of enrollment" means:

(a) a student's school of record; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(14) "Statewide assessment" means a test or assessment required under Rule R277-404.

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53A, Chapter 15, Part 12, Statewide Online Education Program Act.

(16) "USBE course code" means a code for a designated subject matter course assigned by the Superintendent.

(17) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second .5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's SEOP;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) A provider-initiated CCA may be sent directly to the Superintendent if the course is consistent with the student's SEOP.

(b) The primary school of enrollment is not required to meet with the student or parent.

(c) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1)(a) An eligible student may register for program credits consistent with Section 53A-15-1204.

(b) Notwithstanding Subsection (1)(a), a student's primary LEA of enrollment or the Board may allow an eligible student to enroll in additional online courses consistent with Section 53A-15-1204 with documentation

from the LEA.

(2) A student enrolled in a program course may earn no more credits in a year than the number of credits a student may earn by taking a full course load during the regular school day in the student's primary school of enrollment.

(3) An eligible student may register for more than the maximum number of credits described in Subsection 53A-15-1204(2) if:

(a) the student's SEOP indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53A-15-1206.

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the high school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA form, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

(4) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall develop and provide a website for the program that provides information required under Section 53A-15-1212 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsections 53A-15-1006(2) and 53A-15-1208(3)(d).

(b) Course load standards may differ based on subject matter and differing accreditation standards.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to the Government Records Access and Management Act, (GRAMA).

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53A-15-1206(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53A, Chapter 15, Part 12, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53A-15-1210 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours in order to facilitate parent information.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

(a) consistency with course standards;

(b) criminal background checks for provider employees;

(c) documentation of student enrollment and participation; and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

(a) Board procedures;

(b) Board timelines; and

(c) Sections 53A-15-1206, 53A-15-1206.5, 53A-15-1207, and 53A-15-1208.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) post fees on the provider website; and

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as provided in Subsection R277-726-9, a provider shall submit a student's credit and grade to the Superintendent, primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider seeks to suspend a student from an online course for disciplinary reasons, the provider is responsible for all student due process procedures, including the IDEA and Section 504 of the Rehabilitation Act of 1973.

(b) A provider shall notify the Superintendent of a student's withdrawal, if the student is suspended for more than 10 days.

(10)(a) A provider shall provide to the Superintendent a list of course options using USBE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings in January and August annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work.

(16) An LEA may participate in the program as a provider by offering a school or program to a Utah student in grades 9-12 who is not a resident student of the LEA consistent with Section 53A-15-1205(2).

(17) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Section 53A-6-110;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53A-12-103 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and

(ii) Rule R277-487; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only licensed Utah educators as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Sections 53A-15-1503 and 53A-15-1504 prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Section 53A-15-1210(2) and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53A-15-1206 and 53A-15-1206.5.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post all required information online on the provider's individual website including required assessment and accountability information.

R277-726-8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student requests services related to a Section 504 accommodation under the Americans with Disabilities Act, a provider shall:

(i) except as provided in Subsection (1)(b), prepare a Section 504 plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student described in Subsection (1)(a) to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student. **53A-15-1213 53A-1-401**

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student participating in the program qualifies to receive special education services under the IDEA, the home or private school student:

(a) may waive the student's right to receive the special education services; or

(b) subject to the requirements of Subsection (4), enroll in the home or private school student's resident school for the purpose of receiving special education services.

(4) If a home or private school student requests to receive special education services as described in Subsection (3)(b):

(a) the home or private school student's resident school shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (4)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) claim the student in the resident school's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (4)(a)(i).

R277-726-9. Home and Private School Appropriation.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) 50% of the total appropriation for home school students; and

(b) 50% of the total appropriation for private school students.

(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated.

(3) If home school or private school student funds remain by March 1, the Superintendent may release the funds for any pending enrollment requests.

R277-726-10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;

(b) Utah High School Activities Association participation; and

(c) high school graduation.

KEY: statewide online education program
August 11, 2016 Art X Sec 3
Notice of Continuation December 15, 2015 53A-15-1210

R277. Education, Administration.
R277-750. Education Programs for Students with Disabilities.
R277-750-1. Definitions.

"Board" means the Utah State Board of Education.

R277-750-2. 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) which directs the Board to adopt rules regarding services for persons with disabilities, Section 53A-15-301 which directs the Board to set standards for state funds appropriated for students with disabilities and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for special education programs.

R277-750-3. Standards and Procedures.

A. As its rules for programs for students with disabilities, the Board adopts and hereby incorporates by reference the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C., 1400.

B. The Board shall act in accordance with:

(1) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. 794, incorporated by reference in R277-112;

(2) R277-750;

(3) State Board of Education Special Education Rules, August 2013; and

(4) The annual Utah State Federal Application under Part B of the Individuals with Disabilities Education Act as amended in 2004.

C. Students with disabilities shall be entitled to dual enrollment consistent with Section 53A-11-102.5 and R277-438.

KEY: special education

October 8, 2013	**Art X Sec 3**
Notice of Continuation August 15, 2016	**53A-1-402(1)**
	53A-15-301
	53A-1-401(3)

R277. Education, Administration.
R277-911. Secondary Career and Technical Education.
R277-911-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah constitution and state law;

(c) Section 53A-15-202, which allows the Board to establish minimum standards for CTE programs in the public education system; and

(d) Sections 53A-17a-113 and 53A-17a-114, which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.

(2) This rule establishes standards and procedures for LEAs seeking to qualify for funds administered by the Board for CTE programs in the public education system.

R277-911-2. Definitions.

(1) "Aggregate membership" means the sum of all days in membership during a school year for:

(a) the student;

(b) the program;

(c) the school;

(d) the LEA; or

(e) the state.

(2) "Approved program" means a program annually approved by the Board through the consent calendar process that meets or exceeds the state program standards or outcomes for career and technical education programs.

(3) "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

(4)(a) "Career and technical education" or "CTE" means organized educational programs that:

(i) prepare individuals for a wide range of high-skill, high-demand careers;

(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(iii) provide students competency-based instruction, hands-one experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:

(i) agriculture;

(ii) business;

(iii) family and consumer sciences;

(iv) health science;

(v) information technology;

(vi) marketing;

(vii) skilled and technical sciences; and

(viii) technology and engineering education.

(5)(a) "CTE pathway" means a planned sequence of courses within a program of study to assure strong academic and technical preparation connecting high school course work to work beyond high school.

(b) A CTE pathway ensures that a student will be prepared to take advantage of the full range of post-secondary options, including:

(i) on-the-job training;

(ii) certification programs; and

(iii) two- and four-year college degrees.

(6) "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

(7)(a) "Course" means an individual CTE class structured by state-approved standards and CIP code.

(b) An approved course may require one or two periods for up to one year.

(c) Courses may be completed by demonstrated competencies or by course completion.

(8)(a) "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field.

(b) Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation.

(c) Competent performance of entry-level tasks enhances employability and initial productivity.

(9) "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.

(10) "CTE Maintenance of Effort" or "MOE" means the expenditure plan outlined in Subsection R277-911-4(1).

(11) "Program" means a combination of CTE courses that:

(a) provides the competencies for specific job placement or continued related training; and

(b) is outlined in the Plan for College and Career Readiness using all available and appropriate high school courses.

(12) "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, or other prescribed learning experiences as determined by the Plan for College and Career Readiness.

(13) "Regional consortium" means the LEAs, applied technology colleges, colleges and universities within the regions that approve CTE programs.

(14) "Registered apprenticeship" means a training program that:

(a) includes on-the-job training in a specific occupation combined with related classroom training; and

(b) has approval of the Bureau of Apprenticeship and Training.

(15) "Related training" means a course or program that is:

(a) directly related to an occupation;

(b) compatible with apprenticeship training;

(c) taught in a classroom; and

(d) approved by the Bureau of Apprenticeship and Training.

(16) "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to:

(a) specific skill certification;

(b) job placement;

(c) continued education; or

(d) training.

(17)(a) "Skill certification" means a verification of competent task performance.

(b) Skills certification is provided by an approved state or national program certification process.

(18) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which an LEA is eligible.

(19)(a) "Work-based learning" means a student instructional program that:

(a) provides a student training by employment or other activity at a work site;

(b) may take place at a place of business, a home, or a farm; and

(c) is supplemented by needed classroom instruction or teacher assistance.

R277-911-3. CTE Program Approval.

(1)(a) The Superintendent shall approve CTE programs

based on verified training needs of the area and the competencies necessary to provide occupational opportunities for students.

(b) Programs are supported by a data base, including:

(i) local, regional, state, and federal manpower projections;

(ii) student occupational/interest surveys;

(iii) regional job profile;

(iv) advisory committee information; and

(v) follow-up evaluation and reports.

(2) LEA CTE directors shall meet the requirements specified in R277-911.

(3) Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.

(4)(a) An LEA shall provide CTE guidance, counseling, and Board approved testing for students enrolled in CTE programs.

(b) An LEA shall develop a written plan for placement services with the assistance of local advisory committees, business and industry, and the Department of Workforce Services.

(c) An LEA shall develop a Plan for College and Career Readiness for all students, which shall include:

(i) a student's education occupation plans (grades 7-12), including job placement when appropriate;

(ii) all Board, local board and local charter board graduation requirements;

(iii) evidence of annual parent, student, and school representative involvement;

(iv) attainment of approved workplace skill competencies; and

(v) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.

(5)(a) An LEA shall use curricula and instruction that is directly related to business and industry validated competencies.

(b) An LEA shall use a valid skill certification process to verify successful completion of competencies.

(c) An LEA shall provide instruction in proper and safe use of any equipment required for skill certification within the approved program.

(6) An LEA shall provide and safely maintain equipment and facilities, consistent with the validated competencies identified in the instruction standard and applicable state and federal laws.

(7)(a) Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach.

(b) Licenses and endorsements required under Subsection (7)(a) may be obtained through an institutional recommendation or through occupational and educational experience verified by the Board's licensure process.

(c) CTE program instructors shall keep technical and professional skills current through business and industry involvements in order to ensure that students are provided accurate state-of-the-art information.

(8) An LEA shall conduct CTE programs consistent with Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of:

(a) race;

(b) creed;

(c) color;

(d) national origin;

(e) religion;

(f) age;

(g) sex; and

(h) disability.

(9)(a) An LEA shall establish an active advisory council to review all CTE programs annually.

(b) An advisory council may serve several LEAs or a region.

(c) An advisory council reviews:

(i) program offerings;

(ii) quality of programs; and

(iii) equipment needs.

(10) A program advisory committee made up of individuals who are working in the occupational area shall support each state-funded approved CTE program at the LEA or regional level.

(11) LEAs are encouraged to make training available through nationally-chartered CTE student leadership organizations in each area of study.

(12) An LEA, with oversight by local program advisory committee members, shall make an annual evaluation of its CTE programs.

R277-911-4. Disbursement and Expenditure of CTE Funds -- General Standards.

(1) To be eligible for state CTE program funds, an LEA shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership in funded CTE programs, times the current year WPU value, less the amount for:

(a) college and career awareness;

(b) work-based learning; and

(c) comprehensive counseling and guidance.

(2) An LEA may thereafter expend State CTE program funds only for approved CTE programs, grades nine through twelve.

(3) An LEA that does not meet MOE may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

R277-911-5. Disbursement of Funds -- Added Cost Funds.

(1)(a) WPUs shall be allocated for the added instructional costs of approved CTE programs operated or contracted by an LEA.

(b) Programs and courses provided through applied technology colleges, and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.

(2)(a) Computerized or manually produced records for CTE programs shall be kept by:

(i) teacher;

(ii) class; and

(iii) CIP code.

(b) Records described in Subsection (2)(a) shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.

(3) Added cost funds shall not be generated:

(a) during bus travel;

(b) until a student starts attending an approved CTE course;

(c) when a student has been absent, without excuse, for the previous 10 days.

(4) Approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.

(5) Allocations under this R277-911-5 are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to LEAs experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.

(6) Added cost funds shall be used to cover the added CTE program instructional costs of LEA programs.

(7) An LEA that does not comply with the requirements of this Subsection may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

R277-911-6. Disbursement of Funds -- Skill Certification.

(1) An LEA that demonstrates approved student skill certification may receive additional compensation.

(2)(a) To be eligible for skill certification compensation, an LEA shall show its student completer has demonstrated mastery of standards, as established by the Board.

(b) An authorized test administrator shall verify student mastery of the skill standards.

(3) The Superintendent may only disburse skill certification compensation if an approved skill certification assessment is developed for the program.

R277-911-7. Disbursement of Funds -- CTE Leadership Organization Funds.

(1) Participating LEAs sponsoring CTE leadership organizations shall be eligible for a portion of funds set aside for these organizations.

(2) Qualifying CTE leadership organizations shall be nationally chartered and include:

(a) SkillsUSA (an association of Skilled and Technical Sciences Education students);

(b) DECA (Distributive Education Clubs of America);

(c) FFA (Future Farmers of America);

(d) HOSA (Health Occupations Students of America);

(e) FBLA (Future Business Leaders of America);

(f) FCCLA (Family, Career and Community Leaders of America); and

(g) TSA (Technology Students Association).

(3) Up to 1% of the state CTE appropriation for LEAs shall be allocated to eligible LEAs based on documented prior year student membership in approved CTE leadership organizations.

(4)(a) A portion of funds allocated to an LEA for CTE leadership organizations shall be used to pay the LEA's portion of statewide administrative and national competition costs.

(b) An LEA shall use the remaining amount available for the LEA's CTE leadership organization expenses.

R277-911-8. Disbursement of Funds -- School District and Charter School WPUs.

(1) The Superintendent shall allocate WPUs for costs of administration of CTE programs as described in this section.

(2)(a) The Superintendent shall distribute Twenty (20) WPUs to a school district for costs associated with the administration of CTE.

(b) To qualify, a school district shall employ a minimum one-half time CTE director.

(3)(a) To encourage multidistrict CTE administrative services, the Superintendent shall distribute 25 WPUs to a school district that consolidates CTE administrative services with one or more other school districts;

(b) To qualify, a participating school district shall employ a full-time CTE director.

(4)(a) The Superintendent shall distribute Twenty-five (25) WPUs to a single charter school acting as fiscal agent, to provide CTE administrative services to all charter schools offering CTE pathways, grades 9-12.

(b) If more than 10 charter schools offer CTE pathways, the Superintendent shall distribute an additional 5 WPUs for each additional charter school over 10.

(c) To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.

(5)(a) The Superintendent shall distribute 10 WPUs to a small school district consisting of only necessarily existent small high school(s), where multi-district CTE administration is not feasible.

(b) To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.

(6) To qualify for 10, 20 or 25 CTE administrative WPUs as provided in this Subsections (1) through (5), a CTE director shall:

(a) hold or be in the process of completing requirements for a Education Leadership License Area of Concentration described in R277-505;

(b) have an endorsement in at least one career and technical area listed in Rule R277-518; and

(c)(i) have four years of experience as a full-time career and technical educator; or

(ii) complete a prescribed professional development program provided by the Superintendent within a period of two years following board appointment as an LEA CTE director.

(7) In addition to WPUs appropriated under Subsections (1) through (5), the Superintendent shall allocate funds to each approved high school as described in Subsections (8) through (15):

(8) The Superintendent shall distribute 10 WPUs to a high school that:

(a) conducts approved programs in a minimum of two CTE areas specified in Subsection R277-911-1(4)(b);

(b) conducts a minimum of six different state-approved CIP coded courses including at least one CTE pathway; and

(c) has at least one approved career and technical student leadership organization.

(9) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(10) The Superintendent shall distribute 15 WPUs to a high school that:

(a) conducts approved programs in a minimum of three CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of nine different state-approved CIP coded courses including at least one CTE pathway; and

(c) has at least one approved CTE student leadership organization.

(11) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(12) The Superintendent shall distribute 20 WPUs to a high school that:

(a) conducts approved programs in a minimum of four CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of twelve different state-approved CIP coded courses including at least two CTE pathways; and

(c) has at least two approved CTE student leadership organization.

(13) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(14) The Superintendent shall distribute 25 WPUs to a high school that:

(a) conducts approved programs in a minimum of five CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of fifteen different state-approved CIP coded courses including at least two CTE pathways; and

(c) has at least three approved CTE student leadership organizations.

(15) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(16)(a) A maximum of one approved alternative high school, as outlined in Rule R277-730, per school district may

qualify for funds under Subsection (12).

(b) LEAs sharing an alternative school shall receive a prorated share.

(17) Programs and courses provided through school district technical centers may not receive funding under this section.

R277-911-9. Disbursement of Funds -- School District Technical Centers.

(1)(a) The Superintendent may award a maximum of forty WPUs for each school district operating an approved school district center.

(b) To qualify under the approved school district technical center provision, the school district shall:

(i) provide at least one facility other than an existing high school as a designated school district technical center;

(ii) employ a full-time CTE administrator for the center;

(iii) enroll a minimum of 400 students in the school district technical center;

(iv) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges, and higher education institutions;

(v) centralize high-cost programs in the school district technical center;

(vi) conduct approved programs in a minimum of five CTE areas specified in Subsection R277-911-1(4)(b); and

(vii) conduct a minimum of fifteen different state-approved CIP coded courses.

R277-911-10. Disbursement of Funds -- Summer CTE Agriculture Programs.

(1)(a) To receive state summer CTE agriculture program funds, an LEA shall submit to the Superintendent, an application for approval of the LEA's program.

(b) An LEA shall submit its application prior to the annual due date specified by the Superintendent each year.

(c) The Superintendent shall send notification of approval of an LEA's program within ten calendar days of receiving the application.

(2) A teacher of a summer CTE agriculture program shall:

(a) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in Subsection R277-911-3(7);

(b) develop a calendar of activities which shall be approved by LEA administration and reviewed by the Superintendent;

(c)(i) work a minimum of eight hours a day in the summer CTE agriculture program;

(ii) An LEA may approve exceptions which shall be reflected in the calendar of activities;

(d) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer CTE agriculture program;

(e) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with:

(i) the school principal;

(ii) the LEA CTE director; and

(iii) the Superintendent; and

(f) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

(3) College interns may be approved to conduct summer CTE agriculture programs upon approval by the Superintendent.

(4) Students enrolled in the summer CTE agriculture program shall:

(a) have on file in the LEA office the student's Plan for College and Career Readiness goal related to agriculture;

(b) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

(c) have completed the eighth grade; and

(d) have not have graduated from high school.

(5)(a) The Superintendent shall collect data from the program and staff of each LEA to ensure compliance with approved standards.

(b) An LEA shall submit to the Superintendent a final program report, on forms provided by the Superintendent on the annual due date specified by the Superintendent.

(6)(a) The Superintendent shall allocate Summer CTE agricultural funding to each LEA conducting an approved program for a minimum of 35 students lasting nine weeks.

(b) An LEA may receive funding for no more than nine weeks or 35 students.

(7) An LEA operating a program with fewer than 35 students per teacher or for fewer than nine weeks may only receive a prorated share of the summer CTE agricultural allocation.

R277-911-11. Disbursement of Funds - Comprehensive Counseling and Guidance; College and Career Awareness, and Work-Based Learning Programs.

A. The Superintendent shall distribute funds to LEAs consistent with Section 53A-17a-113.

(2) An LEA shall spend funds distributed for comprehensive guidance consistent with Subsection 53A-1a-106(2)(b) and R277-462, which explain the purpose and criteria for student education plans (SEPs) and Plan for College and Career Readiness.

(3) An LEA may spend funds allocated under this section to fund work-based learning programs consistent with Rules R277-915 and R277-916.

(4) An LEA may spend funds allocated under this section to fund College and Career Awareness programs consistent with Rule R277-916.

KEY: career and technical education

August 11, 2016	**Art X Sec 3**
Notice of Continuation August 14, 2012	**53A-15-202**
	53A-17a-113
	53A-17a-114

R277. Education, Administration.
R277-923. American Indian and Alaskan Native Education State Plan Pilot Program.
R277-923-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Section 53A-31-404, which provides that the Board may make rules related to the pilot program; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide:

(a) criteria for evaluating grant applications; and

(b) procedures for:

(i) a school district to apply to the Board to receive grant money; and

(ii) the review of the use of grant money.

R277-923-2. Definitions.

(1) "American Indian and Alaskan Native concentrated school" has the same meaning as that term is defined in Section 53A-31-402.

(2) "Program site" means the school where an LEA plans to use grant money and implement the LEA's program.

R277-923-3. Grant Application.

(1) An LEA may apply for a grant described in Section 53A-31-404 by submitting an application to the Superintendent on or before the last Friday in May.

(2) The Superintendent shall develop a grant application and make the grant application available to LEAs that meet the eligibility as an American Indian and Alaskan Native concentrated school.

R277-923-4. Procedure and Criteria for Awarding a Grant.

(1) The Superintendent shall award one grant to an LEA to serve one or more program sites.

(2) The Superintendent shall award the grant described in Subsection (1) to the LEA based on the following criteria:

(a) up to 20 points will be awarded based on the percentage of American Indian and Alaskan Native students enrolled in the program sites;

(b) up to 15 points will be awarded based on the educator recruiting and retention needs of the program sites;

(c) up to 15 points will be awarded based on the strength of the LEA's program design plan;

(d) up to 10 points will be awarded based on the LEA's plan to objectively evaluate the success of the LEA's program design plan; and

(e) up to 10 points will be awarded based on the strength of the LEA's proposed budget and how many educators the LEA plans to serve.

KEY: Native Americans, Alaskan Natives, grant programs, teacher retention
August 11, 2016 **Art X Sec 3**
53A-31-404
53A-1-401

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

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

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

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

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

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

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

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

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access. (Section 19-2-102(4)).

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

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

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

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

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

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

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

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as found in 42 U.S.C. Chapter 85.

"Clean Coal Technology" means any technology,

including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

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

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

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

"Condensable PM2.5" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

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

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

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

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

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air pollutant or an effluent which contains or may contain an air pollutant; or the effluent so discharged into the atmosphere.

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

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

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

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

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

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

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

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

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

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

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

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

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air

cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

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

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

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

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

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

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

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

(i) Salt Lake County, effective August 18, 1997; and

(ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

(i) Salt Lake City, effective March 22, 1999;

(ii) Ogden City, effective May 8, 2001; and

(iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

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

(1) routine maintenance, repair and replacement;

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

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

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

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

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

(b) which the source is otherwise approved to use;

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

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

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

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

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

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

(2) any physical change that would occur at a source not

qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum or reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

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

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

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

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

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

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

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

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

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

(e) A decrease in actual emissions is creditable only to the extent that:

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

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

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

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

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

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO2, NOx, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate,

company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating

unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air pollutant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2015.

KEY: air pollution, definitions
August 4, 2016 19-2-104(1)(a)
Notice of Continuation May 8, 2014

R307. Environmental Quality, Air Quality.
R307-210. Stationary Sources.
R307-210-1. Standards of Performance for New Stationary Sources (NSPS).

The provisions of 40 Code of Federal Regulations (CFR) Part 60, effective on July 1, 2015, except for Subparts Cb, Cc, Cd, Ce, BBBB, DDDD, and HHHH, are incorporated by reference into these rules with the exception that references in 40 CFR to "Administrator" shall mean "director" unless by federal law the authority referenced is specific to the Administrator and cannot be delegated.

KEY: air pollution, stationary sources, new source review
August 4, 2016 19-2-104(3)(q)
Notice of Continuation May 12, 2016 19-2-108

R307. Environmental Quality, Air Quality.
R307-214. National Emission Standards for Hazardous Air Pollutants.
R307-214-1. Pollutants Subject to Part 61.

The provisions of Title 40 of the Code of Federal Regulations (40 CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of July 1, 2015, are incorporated into these rules by reference. For pollutant emission standards delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the director.

R307-214-2. Sources Subject to Part 63.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2015, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the director, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.

(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.

(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products.

(57) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline).

(58) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing.

(59) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(60) 40 CFR Part 63, Subpart HHHH, National Emission Standards for Wet-Formed Fiberglass Mat Production.

(61) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks.

(62) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(63) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans.

(64) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

(65) 40 CFR Part 63, Subpart NNNN, National Emission Standards for Large Appliances Surface Coating Operations.

(66) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(67) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.

(68) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(69) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(70) 40 CFR Part 63, Subpart SSSS, National Emission Standards for Metal Coil Surface Coating Operations.

(71) 40 CFR Part 63, Subpart TTTT, National Emission Standards for Leather Tanning and Finishing Operations.

(72) 40 CFR Part 63, Subpart UUUU, National Emission Standards for Cellulose Product Manufacturing.

(73) 40 CFR Part 63, Subpart VVVV, National Emission Standards for Boat Manufacturing.

(74) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(75) 40 CFR Part 63, Subpart XXXX, National Emission Standards for Tire Manufacturing.

(76) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.

(77) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

(78) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.

(79) 40 CFR Part 63, Subpart BBBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(80) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(81) 40 CFR Part 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.

(82) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.

(83) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(84) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation.

(85) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing.

(86) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants.

(87) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(88) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(89) 40 CFR Part 63, Subpart LLLLL, National

Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(90) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(91) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(92) 40 CFR Part 63, Subpart PPPPP, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands.

(93) 40 CFR Part 63, Subpart QQQQQ, National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(94) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing.

(95) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(96) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

(97) 40 CFR Part 63, Subpart UUUUU, National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-Fired Electric Utility Steam Generating Units.

(98) 40 CFR Part 63, Subpart WWWWW, National Emission Standards for Hospital Ethylene Oxide Sterilizers.

(99) 40 CFR Part 63, Subpart YYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.

(100) 40 CFR Part 63, Subpart ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

(101) 40 CFR Part 63 Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(102) 40 CFR Part 63 Subpart CCCCCC National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.

(103) 40 CFR Part 63, Subpart DDDDDD, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.

(104) 40 CFR Part 63, Subpart EEEEEE, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.

(105) 40 CFR Part 63, Subpart FFFFFF, National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.

(106) 40 CFR Part 63, Subpart GGGGGG, National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

(107) 40 CFR Part 63, Subpart JJJJJJ, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources.

(108) 40 CFR Part 63, Subpart LLLLLL, National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.

(109) 40 CFR Part 63, Subpart MMMMMM, National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.

(110) 40 CFR Part 63, Subpart NNNNNN, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.

(111) 40 CFR Part 63, Subpart OOOOOO, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.

(112) 40 CFR Part 63, Subpart PPPPPP, National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.

(113) 40 CFR Part 63, Subpart QQQQQQ, National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.

(114) 40 CFR Part 63, Subpart RRRRRR, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.

(115) 40 CFR Part 63, Subpart SSSSSS, National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.

(116) 40 CFR Part 63, Subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.

(117) 40 CFR Part 63, Subpart TTTTTT, National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.

(118) 40 CFR Part 63, Subpart WWWWWW, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.

(119) 40 CFR Part 63, Subpart XXXXXX, National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(120) 40 CFR Part 63, Subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.

(121) 40 CFR Part 63, Subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries.

(122) 40 CFR Part 63, Subpart AAAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.

(123) 40 CFR Part 63, Subpart BBBBBBB, National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.

(124) 40 CFR Part 63, Subpart CCCCCCC, National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.

(125) 40 CFR Part 63, Subpart DDDDDDD, National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.

(126) 40 CFR Part 63, Subpart EEEEEEE, National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.

KEY: air pollution, hazardous air pollutant, MACT, NESHAP
August 4, 2016 19-2-104(1)(a)
Notice of Continuation November 8, 2012

R311. Environmental Quality, Environmental Response and Remediation.
R311-210. Administrative Procedures.
R311-210-1. Administrative Procedures.

Administrative proceedings are governed by Rule R305-7.

KEY: administrative proceedings, underground storage tanks, hearings, adjudicative proceedings
August 29, 2011 19-1-301
Notice of Continuation April 10, 2012 19-6-105
19-6-403
63G-4-201 through 205
63G-4-503

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-261. General Requirements - Identification and Listing of Hazardous Waste.
R315-261-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under Rules R315-262 through 265, 268, 270, and 124 and which are subject to the notification requirements of these rules.

(1) Sections R315-261-1 through 9 define the terms "solid waste" and "hazardous waste", identify those wastes which are excluded from regulation under Rules R315-262 through R315-266, R315-268 and R315-270 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

(2) Sections R315-261-10 and 11 set forth the criteria used to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Sections R315-261-20 through 24 identify characteristics of hazardous waste.

(4) Sections R315-261-30 through 35 list particular hazardous wastes.

(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 Title 19 Chapter 6. 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) Rule R315-261 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 Rule R315-261, or is not a hazardous waste identified or listed in Rule R315-261, 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.

(c) For the purposes of Sections R315-261-2 and 261-6:

(1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) "Sludge" has the same meaning used in Section R315-260-10;

(3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.

(4) A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of Subsections R315-261-4(a)(23), and (24) smelting, melting and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in Subsection R315-266-100(d)(1) through (3), and if the residuals meet the requirements specified in Section R315-266-112.

(5) A material is "used or reused" if it is either:

(i) Employed as an ingredient, including use as an intermediate, in an industrial process to make a product, for example, distillation bottoms from one process used as feedstock in another process. However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products, as when metals are recovered from metal-containing secondary materials; or

(ii) Employed in a particular function or application as an effective substitute for a commercial product, for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment.

(6) "Scrap metal" is bits and pieces of metal, parts for example bars, turnings, rods, sheets, wire, or metal pieces that may be combined together with bolts or soldering, for example radiators, scrap automobiles, railroad box cars, which when worn or superfluous can be recycled.

(7) A material is "recycled" if it is used, reused, or reclaimed.

(8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year, commencing on January 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials shall be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period shall be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, e.g., slags from a single smelting process, that is recycled in the same way, i.e., from which the same material is recovered or that is used in the same way. Materials accumulating in units that would be exempt from regulation under Subsection R315-261-4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) "Excluded scrap metal" is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) "Processed scrap metal" is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type, i.e., sorted, and, fines, drosses and related materials which have been agglomerated. Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled Subsection R315-261-4(a)(14).

(11) "Home scrap metal" is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) "Prompt scrap metal" is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

R315-261-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by Subsection R315-261-4(a) or that is not excluded

under Sections R315-260-30 and R315-260-31 or that is not excluded by a non-waste determination under Sections R315-260-30 and R315-260-34.

(2)(i) A discarded material is any material which is:

(A) Abandoned, as explained in Subsection R315-261-2(b); or

(B) Recycled, as explained in Subsection R315-261-2(c); or

(C) Considered inherently waste-like, as explained in Subsection R315-261-2(d).

(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; or

(4) Sham recycled, as explained in Subsection R315-261-2(g)

(c) Materials are solid wastes if they are recycled-or accumulated, stored, or treated before recycling-as specified in Subsections R315-261-2(c)(1) through (4).

(1) Used in a manner constituting disposal.

(i) Materials noted with a "*" in Column 1 of Table 1 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 Section R315-261-33 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 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 Section R315-261-33 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "-" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an "*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of Subsections R315-261-4(a)(17), or R315-261-4(a)(23), R315-261-4(a)(24) or R35-261-4(a)(27).

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

	Use Constituting Disposal 261-2(c)(1)	Energy recovery/ fuel 261-2(c) (2)	Reclamation 261-2(c)(3) except as provided in 261-4-(a)(17) 261-4(a)(23) 261-4(a)(24) or 261-4(a)(27)	Speculative accumulation 261-2(c)(4)
1	2	3	4	
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 261-31 or 261-32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products (listed in 261-31 or 261-32	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in 261-33	(*)	(*)		
Scrap metal that is not excluded under 261-4(a)(13)	(*)	(*)	(*)	(*)

Note 1: All rule references in Table 1 are to R315.
Note 2: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in Section R315-261-1.

(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 Sections R315-261-20 through 24 and 30 through 35, except for brominated material that meets the following criteria:

(i) The material shall contain a bromine concentration of at least 45%; and

(ii) The material shall contain less than a total of 1% of toxic organic compounds listed in Rule R315-261 appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance, hard piping.

(3) The Board shall use the following criteria to add wastes to Subsection R315-261-2(d)(1) or (2):

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in appendix VIII of Rule R315-261 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 shall be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at Subsection R315-261-4(a)(17) apply

rather than Subsection R315-261-2(e)(1)(iii).

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process described in Subsections R315-261-2(e)(1)(i) through (iii):

(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 Subsections R315-261-2(d)(1) and (d)(2).

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing Sections 19-6-101 through 125 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall 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 shall 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 shall show that they have the necessary equipment to do so.

(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section R315-260-43.

R315-261-3. Definition of Hazardous Waste.

(a) A solid waste, as defined in Section R315-261-2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under Subsection R315-261-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under Sections R315-261-20 through 24 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 1 to Section R315-261-24 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.

(ii) It is listed in Sections R315-261-30 through 35 and has not been excluded from the lists in Sections R315-261-30 through 35 under Sections R315-260-.20 and R315-260-22.

(iii) (Reserved)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Sections R315-261-30 through 35 and has not been excluded from Subsection R315-261-3(a)(2) under Sections R315-260-20 and R315-260-22, Subsection R315-261-3(g), or Subsection R315-261-3(h); however, the following mixtures of solid wastes and hazardous wastes listed in Sections R315-261-30 through 35 are not hazardous wastes, except by application of Subsections R315-261-3(a)(2)(i) or (ii), 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,including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in Section R315-261-31: benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived-from the combustion of these spent 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 pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system, at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions, does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption shall use an aerated biological wastewater treatment system and shall use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section R315-261-31: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent 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 pretreatment system does not exceed 25 parts per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system; at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions; does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the

monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(C) One of the following wastes listed in Section R315-261-32, 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 hazardous waste, commercial chemical product, or chemical intermediate listed in Sections R315-261-31 through R315-261-33, arising from de minimis losses of these materials. For purposes of this Subsection R315-261-3(a)(2)(iv)(D), de minimis losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations, e.g., 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. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-31 through R315-261-32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-30 through 35 shall either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Rule R315-261 appendix VII; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority shall be placed in the facility's on-site files; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-261-30 through 35, 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 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 Section R315-261.32: 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 dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in Section R315-261-32: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 or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the

sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(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 Sections R315-261-30 through 35. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste; for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of Rule R315-261.

(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 Subsection R315-261-3(a)(1) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Sections R315-261-30 through 35, when the waste first meets the listing description set forth in R315-261-30 through 35.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in R315-261-30 through 35 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 Sections R315-261-20 through 24.

(c) Unless and until it meets the criteria of Subsection R315-261-3(d):

(1) A hazardous waste shall remain a hazardous waste.

(2)(i) Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), 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) Waste from burning any of the materials exempted from regulation by Subsection R315-261-6(a)(3)(iii) and (iv).

(C)(I) Nonwastewater residues, such as slag, resulting from high temperature metals recovery 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 Section R315-260-10, that are disposed in solid waste landfills regulated under Rules R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified in the tables 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 shall 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 high temperature metals recovery 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 high temperature metals recovery 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 high temperature metals recovery 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 Rules 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 landfill 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 Rules 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 Section R315-261-32: 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 Section R315-261-32: - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172.

(d) Any solid waste described in Subsection R315-261-3(c) 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 Sections R315-261-20 through 24. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Rule R315-268, 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 R315-261-30 through 35, contains a waste listed under Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35, it also has been excluded from Subsection R315-261-3(c) under Sections R315-260-20 and R315-260-22.

(e) (Reserved)

(f) Notwithstanding Subsections R315-261-3(a) through (d) and provided the debris as defined in Rule R315-268 does not exhibit a characteristic identified in Sections R315-261-20 through 24, the following materials are not subject to regulation under Rules R315-260 through 266, R315-268, or R315-270:

(1) Hazardous debris as defined in Rule R315-268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of Section R315-268-45; persons claiming this exclusion in an enforcement action shall 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 Rule R315-268 that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)(1) A hazardous waste that is listed in Sections R315-261-30 through 35 solely because it exhibits one or more characteristics of ignitability as defined under Section R315-261-21, corrosivity as defined under Section R315-261-22, or reactivity as defined under Section R315-261-23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(2) The exclusion described in Subsection R315-261-3(g)(1) also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(c)(2)(i).

(3) Wastes excluded under Subsection R315-261-3(g) are subject to Rule R315-268, 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 Subsection R315-261-4(b)(7) and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24 for which the hazardous waste listed in Sections R315-261-30 through 35 was listed.

R315-261-4. Exclusions.

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

(1)(i) Domestic sewage; and

(ii) 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. 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, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Subsection R315-261-1(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 Subsections

R315-261-4(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 on-site 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 40 CFR 265.440 through R315-265-445, which are adopted and incorporated by reference, 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 prepares 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 shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies 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 the 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 specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or 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 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, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), 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 Subsection R315-261-4(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 Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, 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 Subsection R315-261-4(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 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 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) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall 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 shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall 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 shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall 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 material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks,

containers and buildings eligible for exclusion.

(A) The Director shall 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 shall 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 Subsection R315-261-4(a)(17)(iv), the Director shall 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 shall be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall 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.

(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 Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers shall:

(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 Subsection R315-261-4(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 shall be an engineered structure made of non-earthen materials that provide structural support, and shall have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose shall be structurally sound and, if outdoors, shall have roofs or covers that prevent contact with wind and rain. Containers used for this purpose shall be kept closed except when it is necessary to add or remove material, and shall be in sound condition. Containers that are stored outdoors shall be managed within storage areas that:

(I) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(III) 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 Subsection R315-261-4(a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(III) 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 shall:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(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 Subsection R315-261-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which shall 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 Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, 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 Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20), are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(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 shall contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

(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 shall 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 Subsection R315-261-4(a)(21)(ii). Such records shall 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 this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during

this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all four factors in Subsection R315-260-43(a). Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) The hazardous secondary material generator shall arrange for transport of hazardous secondary materials to a verified reclamation facility, or facilities, in the United States. A verified reclamation facility is a facility that has been granted an exclusion under Subsection R315-260-31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility shall have been granted an exclusion under Subsection R315-260-31(d) or the management of the hazardous secondary materials at that facility shall be addressed under a hazardous waste Part B permit or interim status standards, and the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

(C) The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(III) The type and quantity of hazardous secondary material in the shipment.

(D) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

(E) The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

(G) The reclaimer and intermediate facility have been granted an exclusion under Subsection R315-260-31(d) or have a hazardous waste Part B permit or interim status standards that address the management of the hazardous secondary materials; and

(vii) All persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) Reserved

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other

chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating "on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found in Sections R315-261-17- through 179 and 190 through 200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(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, e.g., 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 such 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 or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils 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)(i) 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 Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 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 Subsections R315-261-4(b)(6)(i)(A), (B), and (C), 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 TiO2 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 Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(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 Subsection R315-261-4(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 Subsection R315-261-4(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 Section R315-266-112 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 of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action regulations under Section

R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 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: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, 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) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 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.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(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 Subsection R315-261-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do 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 sections 307(b) or 402 of the Clean Water Act.

(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 K178 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 Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a solid waste landfill that:

(1) is regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules R315-260 through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. 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 regulation under Rules R315-262 through 265, 268, 270, and 124 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 product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), 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 composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(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 Subsections R315-261-4(d)(1) (i) and (ii), 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:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) 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 Subsection R315-261-4(d)(1).

(e)(1) Treatability Study Samples. Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(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 Subsection R315-261-4(e)(1) 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; and

(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 Subsections R315-261-4(e)(2)(iii)(A) or (B) 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:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) 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 Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending three 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:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) 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 Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), 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 timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall 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 shall 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 conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) 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 Subsection R315-261-4(f).

(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;

(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 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;

(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 Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused samples are returned to the sample originator under the Subsection R3315-261-4(e) exemption.

(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 Subsection R315-261-4(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 an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(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 Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

R315-261-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in Subsections R315-261-5(e), (f), (g), and (j), a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Rules R315-262 through 268, 270 and 124, and the notification requirements of section 3010 of RCRA, provided the generator complies with the requirements of Subsections R315-261-5(f), (g), and (j).

(c) When making the quantity determinations of Rules R315-261 and 262, the generator shall include all hazardous waste that it generates, except hazardous waste that:

(1) Is exempt from regulation under Subsections R315-261-4(c) through (f), R315-261-6(a)(3), R315-261-7(a)(1), or R315-261-8; or

(2) Is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in Section R315-260-10; or

(3) Is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under Subsection R315-261-6(c)(2); or

(4) Is used oil managed under the requirements of Subsection R315-261-6(a)(4) and Rule R315-15; or

(5) Is spent lead-acid batteries managed under the requirements of Section R315-266-80; or

(6) Is universal waste managed under Section R315-261-9 and Rule R315-273;

(7) Is a hazardous waste that is an unused commercial chemical product, listed in Sections R315-261-30 through 35 or exhibiting one or more characteristics in Sections R315-261-20 through 24, that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to Section R315-262-213. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in Section R315-262-200.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) Hazardous waste when it is removed from on-site

storage; or

(2) Hazardous waste produced by on-site treatment, including reclamation, of his hazardous waste, so long as the hazardous waste that is treated was counted once; or

(3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Rules R315-262 through 268, 270 and 124, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in Section R315-261-31 or Subsection R315-261-33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in Section R315-261-31 or Subsection R315-261-33(e).

Note to Subsection R315-261-33(e): "Full regulation" means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in Subsections R315-261-5(e)(1) or (2) to be excluded from full regulation under Section R315-261-5, the generator shall comply with the following requirements:

(1) Section R315-262-11;

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in Subsections R315-261-(e)(1) or (2), all of those accumulated wastes are subject to regulation under Rules R315-262 through 266, 268, 270 and 124, and the applicable notification requirements of section 3010 of RCRA. The time period of Subsection R315-262-34(a), for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Rule R315-270;

(ii) In interim status under Rules R315-270 and 265;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through 320;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5 through 257.30; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under Section R316-261-5, the generator shall comply with the following requirements:

(1) Section R315-262-11;

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Rule R315-262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of Rules R315-263 through 266, 268, 270 and 124, and the applicable notification requirements of section 3010 of RCRA. The time period of Subsection R315-262-34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under Rule R315-270;

(ii) In interim status under Rules R315-265 and 270;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under 40 CFR 271;

(iv) Permitted, licensed, or registered to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Rules R315-301 through 320;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR 257.5 through 257.30; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under Rule R315-273, a universal waste handler or destination facility subject to the requirements of Rule R315-273.

(h) Hazardous waste subject to the reduced requirements of Section R315-261-5 may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in Section R315-261-5, unless the mixture meets any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of Section R315-261-5, the mixture is subject to full regulation.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Rule R315-15. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.

R315-261-6. Requirements for Recyclable Materials.

(a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of Subsections R315-261-6(b) and (c), except for the materials listed in Subsections R315-261-6(a)(2) and (a)(3). Hazardous wastes that are recycled shall be known as "recyclable materials."

(2) The following recyclable materials are not subject to the requirements of Section R315-261-6 but are regulated under Sections R315-266-20 through 23, Section R315-266-70, Section R315-266-80, Sections R315-266-100 through 112, Sections R315-266-200 through 206, and Sections R315-266-210, 220, 225, 230,235, 240, 245, 250, 255, 260, 310, 315, 320, 325, 330, 335, 340, 345,350, 355, and 360 and all applicable provisions in Rules R315-268, 270 and 124.

(i) Recyclable materials used in a manner constituting disposal, Sections R315-266-20 through 23;

(ii) Hazardous wastes burned, as defined in Subsection R315-266-100(a), in boilers and industrial furnaces that are not regulated under Sections R315-264-340 through 345, 347 and 351; Sections R315-370, 373, 375, 377, and 381 through 383; and Section R315-266-100 through 112;

(iii) Recyclable materials from which precious metals are reclaimed, Section R315-266-70;

(iv) Spent lead-acid batteries that are being reclaimed, Section R315-266-80.

(3) The following recyclable materials are not subject to regulation under Rules R315-262 through 268, 270 and 124, and are not subject to the notification requirements of section 3010 of RCRA:

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in Section R315-262-58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, shall comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b), and Section R315-262-57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Sections R315-262-50 through 58, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, shall ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and shall ensure that it is delivered to the facility designated by the person initiating the shipment.

(ii) Scrap metal that is not excluded under Subsection R315-261-4(a)(13);

(iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices, this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under Subsection R315-261-4(a)(12);

(iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under Subsection R315-15-1.2(c) and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under Subsection R315-15-1.2(c); and

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under Subsection R315-15-1.2(c).

(4) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Rules R315-260 through 268, but is regulated under Rule R315-15. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose, including the purpose for which the oil was originally used. Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(5) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in Subsection R315-262-58(a)(1), for purpose of recovery is subject to the requirements of Sections R315-262-80 through 87 and 89, if it is subject to either the manifesting requirements of Rule R315-262, to the universal waste management standards of Rule R315-273.

(b) Generators and transporters of recyclable materials are subject to the applicable requirements of Rules R315-262 and 263 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a).

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Rules R315-264 and 265, and under Rules R315-266, 268, 270 and 124 and the notification requirements under section 3010 of RCRA, except as provided in Subsection R315-261-6(a). The recycling process itself is exempt from regulation except as provided in Subsection R315-261-6(d).

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in R315-261-6(a):

(i) Notification requirements under section 3010 of RCRA;

(ii) 40 CFR 265.71 and 72, which are adopted by reference; dealing with the use of the manifest and manifest discrepancies.

(iii) Subsection R315-261-6(d).

(d) Owners or operators of facilities subject to permitting requirements under Section 19-6-108 with hazardous waste management units that recycle hazardous wastes are subject to the requirements of Sections R315-264-1030 through 1036; Sections R315-264-1050 through 1065; 40 CFR 265.1030 through 1035, which are adopted and incorporated by reference; or 40 CFR 265.1050 through 1064, which are adopted and incorporated by reference.

R315-261-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either: an empty container; or an inner liner removed from an empty container, as defined in Subsection R315-261-7(b), is not subject to regulation under Rules R315-261 through 266, 268, 270 or 124 or to the notification requirements of section 3010 of RCRA.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in Subsection R315-261-7(b), is subject to regulation under Rules R315-261 through 266, 268, 270 and 124 and to the notification requirements of section 3010 of RCRA.

(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 an acute hazardous waste listed in Section R315-261-31 or Subsection R315-261-33(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 remain 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 Section R315-261-31 or Subsection R315-261-33(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.

R315-261-8. PCB Wastes Regulated Under Toxic Substance Control Act.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under 40 CFR 761 and that are hazardous only because they fail the test for the Toxicity Characteristic. Hazardous Waste Codes D018 through D043 only, are exempt from regulation under Rules R315-261 through 265, 268, 270 and 124, and the notification requirements of section 3010 of RCRA.

R315-261-9. Requirements for Universal Waste.

The wastes listed in Section R315-261-9 are exempt from regulation under Rules R315-262 through 270 except as specified in Rule R315-273 and, therefore are not fully regulated as hazardous waste. The wastes listed in Section R315-261-9 are subject to regulation under Rule R315-273:

(a) Batteries as described in Section R315-273-2;

(b) Pesticides as described in Section R315-273-3;

(c) Mercury-containing equipment as described in Section R315-273-4; and

(d) Lamps as described in Section R315-273-5.

(e) Antifreeze as described in Subsection R315-273-6(a).

(f) Aerosol cans as described in Subsection R315-273-6(b).

R315-261-10. Criteria for Identifying the Characteristics of Hazardous Waste.

(a) The Board shall identify and define a characteristic of hazardous waste in Sections R315-261-20 through 24 only upon determining that:

(1) A solid waste that exhibits the characteristic may:

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) 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

(2) The characteristic can be:

(i) 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

(ii) Reasonably detected by generators of solid waste through their knowledge of their waste.

R315-261-11. Criteria for Listing Hazardous Waste.

(a) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(1) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24.

(2) 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 2 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 shall be designated Acute Hazardous Waste.

(3) It contains any of the toxic constituents listed in Rule R315-261 appendix VIII 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:

(i) The nature of the toxicity presented by the constituent.

(ii) The concentration of the constituent in the waste.

(iii) 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 Subsection R315-261-11(a)(3)(vii).

(iv) The persistence of the constituent or any toxic degradation product of the constituent.

(v) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) The plausible types of improper management to which the waste could be subjected.

(viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) 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.

(x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) Such other factors as may be appropriate. Substances shall be listed on appendix VIII of Rule R315-261 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 shall be designated Toxic wastes.

(b) The Board may list classes or types of solid waste as hazardous waste if it has 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.

(c) The Board shall use the criteria for listing specified in Section R315-261-11 to establish the exclusion limits

referred to in Subsection R315-261-5(c).

R315-261-20. Characteristics of Hazardous Waste - General.

(a) A solid waste, as defined in Section R315-261-2, which is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b), is a hazardous waste if it exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(b) A hazardous waste which is identified by a characteristic in Sections R315-261-20 through 24 is assigned every EPA Hazardous Waste Number that is applicable as set forth in Sections R315-261-20 through 24. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under Rules R315-262 through 265, 268 and 270.

(c) For purposes of Sections R315-261-20 through 24, the Board shall consider a sample obtained using any of the applicable sampling methods specified in appendix I of Rule R315-261 to be a representative sample within the meaning of Rule R315-260.

R315-261-21. Characteristics of Hazardous Waste - Characteristic of Ignitability.

(a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has 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, see Section R315-260-11, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278-78, see Section R315-260-11.

(2) 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.

(3) It is an ignitable compressed gas.

(i) The term "compressed gas" shall designate any material or mixture having in the container an absolute pressure exceeding 40 p.s.i. at 70 degrees Fahrenheit or, regardless of the pressure at 70 degrees Fahrenheit, having an absolute pressure exceeding 104 p.s.i. at 130 degrees Fahrenheit; or any liquid flammable material having a vapor pressure exceeding 40 p.s.i. absolute at 100 degrees Fahrenheit as determined by ASTM Test D-323.

(ii) A compressed gas shall be characterized as ignitable if any one of the following occurs:

(A) Either a mixture of 13 percent or less, by volume, with air forms a flammable mixture or the flammable range with air is wider than 12 percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure. The method of sampling and test procedure shall be acceptable to the Bureau of Explosives and approved by the director, Pipeline and Hazardous Materials Technology, U.S. Department of Transportation, see Note 2.

(B) Using the Bureau of Explosives' Flame Projection Apparatus, see Note 1, the flame projects more than 18 inches beyond the ignition source with valve opened fully, or, the flame flashes back and burns at the valve with any degree of valve opening.

(C) Using the Bureau of Explosives' Open Drum Apparatus, see Note 1, there is any significant propagation of flame away from the ignition source.

(D) Using the Bureau of Explosives' Closed Drum Apparatus, see Note 1, there is any explosion of the vapor-air mixture in the drum.

(4) It is an oxidizer. An oxidizer for the purpose of this subchapter is a substance such as a chlorate, permanganate, inorganic peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter (see Note 4).

(i) An organic compound containing the bivalent -O-O- structure and which may be considered a derivative of hydrogen peroxide where one or more of the hydrogen atoms have been replaced by organic radicals shall be classed as an organic peroxide unless:

(A) The material meets the definition of a Class A explosive or a Class B explosive, as defined in Subsection R315-261-23(a)(8), in which case it shall be classed as an explosive,

(B) The material is forbidden to be offered for transportation according to 49 CFR 172.101 and 49 CFR 173.21,

(C) It is determined that the predominant hazard of the material containing an organic peroxide is other than that of an organic peroxide, or

(D) According to data on file with the Pipeline and Hazardous Materials Safety Administration in the U.S. Department of Transportation (see Note 3), it has been determined that the material does not present a hazard in transportation.

(b) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

Note 1: A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives.

Note 2: As part of a U.S. Department of Transportation (DOT) reorganization, the Office of Hazardous Materials Technology (OHMT), which was the office listed in the 1980 publication of 49 CFR 173.300 for the purposes of approving sampling and test procedures for a flammable gas, ceased operations on February 20, 2005. OHMT programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 3: As part of a U.S. Department of Transportation (DOT) reorganization, the Research and Special Programs Administration (RSPA), which was the office listed in the 1980 publication of 49 CFR 173.151a for the purposes of determining that a material does not present a hazard in transport, ceased operations on February 20, 2005. RSPA programs have moved to the Pipeline and Hazardous Materials Safety Administration (PHMSA) in the DOT.

Note 4: The DOT regulatory definition of an oxidizer was contained in Section 173.151 of 49 CFR, and the definition of an organic peroxide was contained in paragraph 173.151a. An organic peroxide is a type of oxidizer.

R315-261-22. Characteristics of Hazardous Waste - Characteristic of Corrosivity.

(a) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(1) 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 9040C in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, see Section R315-260-11 which incorporates 40 CFR 260.11 by reference.

(2) 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 Method 1110A in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, see

Section R315-260-11 which incorporates 40 CFR 260.11 by reference.

(b) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

R315-261-23. Characteristics of Hazardous Waste - Characteristic of Reactivity.

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) 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.

(5) 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.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

(b) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

R315-261-24. Characteristics of Hazardous Waste - Toxicity Characteristic.

(a) 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, see Section R315-260-11, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at the concentration equal to or greater than the respective value given in that Table 1. 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 purpose of Section R315-261-24.

(b) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

TABLE 1
Maximum Concentration of Contaminants for the Toxicity Characteristic

PA HW(1)	Contaminant CAS(2)	Regulatory Level (mg/L)
D004 Arsenic	7440-38-2	5.0
D005 Barium	7440-39-3	100.0
D018 Benzene	71-43-2	0.5
D006 Cadmium	7440-43-9	1.0
D019 Carbon tetrachloride	56-23-5	0.5
D020 Chlordane	57-74-9	0.03
D021 Chlorobenzene	108-90-7	100.0
D022 Chloroform	67-66-3	6.0
D007 Chromium	7440-47-3	5.0
D023 o-Cresol	95-48-7	200.0(4)
D024 m-Cresol	108-39-4	200.0(4)
D025 p-Cresol	106-44-5	200.0(4)
D026 Cresol		200.0(4)
D016 2,4-D	94-75-7	10.0
D027 1,4-Dichlorobenzene	106-46-7	7.5
D028 1,2-Dichloroethane	107-06-2	0.5
D029 1,1-Dichloroethylene	75-35-4	0.7
D030 2,4-Dinitrotoluene	121-14-2	0.13(3)
D012 Endrin	72-20-8	0.02
D031 Heptachlor (and its epoxide)	76-44-8	0.008
D032 Hexachlorobenzene	118-74-1	0.13(3)
D033 Hexachlorobutadiene	87-68-3	0.5
D034 Hexachloroethane	67-72-1	3.0
D008 Lead	7439-92-1	5.0
D013 Lindane	58-89-9	0.4
D009 Mercury	7439-97-6	0.2
D014 Methoxychlor	72-43-5	10.0
D035 Methyl ethyl ketone	78-93-3	200.0
D036 Nitrobenzene	98-95-3	2.0
D037 Pentrachlorophenol	87-86-5	100.0
D038 Pyridine	110-86-1	5.0(3)
D010 Selenium	7782-49-2	1.0
D011 Silver	7440-22-4	5.0
D039 Tetrachloroethylene	127-18-4	0.7
D015 Toxaphene	8001-35-2	0.5
D040 Trichloroethylene	79-01-6	0.5
D04 2,4,5-Trichlorophenol	95-95-4	400.0
D042 2,4,6-Trichlorophenol	88-06-2	2.0
D017 2,4,5-TP (Silvex)	93-72-1	1.0
D043 Vinyl chloride	75-01-4	0.2

(1) Hazardous waste number.
(2) Chemical abstracts service number.
(3) Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.
(4) If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

R315-261-30. Lists of Hazardous Wastes - General.

(a) A solid waste is a hazardous waste if it is listed in Sections R315-261-30 through 35, unless it has been excluded from this list under Sections R315-260.20 and 22.

(b) The Board shall indicate the basis for listing the classes or types of wastes listed in Sections R315-261-30 through 35 by employing one or more of the following Hazard Codes:

(1) Ignitable Waste: (I)
(2) Corrosive Waste: (C)
(3) Reactive Waste: (R)
(4) Toxicity Characteristic Waste: (E)
(5) Acute Hazardous Waste: (H)
(6) Toxic Waste: (T)

Appendix VII identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste or Toxic Waste in Sections R315-261-31 and 32.

(c) Each hazardous waste listed in Sections R315-261-30 through 35 is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used in complying with the notification requirements of Section 3010 of the RCRA and certain recordkeeping and reporting requirements under Rules R315-262 through 265, 268, and 270.

(d) The following hazardous wastes listed in Section R315-261-31 are subject to the exclusion limits for acutely hazardous wastes established in Section R315-261-5: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

R315-261-31. Lists of Hazardous Wastes - Hazardous

Wastes from Non-Specific Sources.

(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in R315-260 appendix IX which incorporates 40 CFR 260 appendix IX by reference.

TABLE 2
Hazardous Wastes From Non-specific Sources

Industry and EPA hazardous waste No. Generic:	Hazardous waste	Hazard Code
F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more, by volume, of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F002	The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F003	The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(I)*
F004	The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F005	The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more, by volume, of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(I,T)
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating, segregated basis, on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum	(T)
F007	Spent cyanide plating bath solutions from electroplating operations	(R,T)
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process	(R,T)
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process	(R,T)
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process	(R,T)
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations	(R,T)
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process	(T)
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in Sections R315-258-40, R315-264-301 or 40 CFR 265.301, which is adopted by reference. For the purposes of this listing, motor vehicle manufacturing is defined in Subsection R315-261-31(b)(4)(i) and Subsection R315-261-31(b)(4)(ii) Describes the Recordkeeping requirements for motor vehicle manufacturing facilities	(T)
F020	Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.	(H)
F021	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives	(H)
F022	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tetra-, penta-, or hexachlorobenzenes under alkaline conditions	(H)
F023	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use;as a reactant, chemical intermediate, or component in a formulating process; of tri- and tetrachlorophenols. This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified	(H)

	2,4,5-trichlorophenol.	
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Sections R315-261.31 or 32.	(T)
F025	Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution	(T)
F026	Wastes, except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use, as a reactant, chemical intermediate, or component in a formulating process, of tetra-, penta-, or hexachlorobenzene under alkaline conditions	(H)
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing Hexachlorophene sythesized from prepurified 2,4,5-trichlorophenol as the sole component.	(H)
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027	(T)
F032	Wastewaters, except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section R315-261-35 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes, i.e., F034 or F035, and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	(T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol	(T)
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units, and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under Subsection R315-261-4 (a)(12)(i), if those residuals are to be disposed of	(T)
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing	(T)
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Sections R316-261-30 through 35. Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.	(T)
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)

*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

(b) Listing Specific Definitions:

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes,

enhance biological activity, and

(A) the units employ a minimum of 6 hp per million gallons of treatment volume; and either

(B) the hydraulic retention time of the unit is no longer than 5 days; or

(C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(A) the unit is an aggressive biological treatment unit as defined in this subsection; and

(B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) floats are considered to be generated at the moment they are formed in the top of the unit.

(4) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles, including light duty vans, pick-up trucks, minivans, and sport utility vehicles. Facilities shall be engaged in manufacturing complete vehicles, body and chassis or unibody, or chassis only.

(ii) Generators shall maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records shall include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators shall maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Director.

R315-261-32. Lists of Hazardous Wastes - Hazardous Wastes from Specific Sources.

(a) The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in appendix IX.

TABLE

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Wood preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol	(T)
Inorganic pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments, anhydrous and hydrated,	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments	(T)
K008	Oven residue from the production of chrome oxide green pigments	(T)
Organic chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile	(R,T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile	(R,T)
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile	(T)
K015	Still bottoms from the distillation of benzyl chloride	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin	(T)
K018	Heavy ends from the fractionation column in ethyl chloride production	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production	(T)
K022	Distillation bottom tars from the production of phenol/acetone from cumene	(T)
K023	Distillation light ends from the production of phthalic anhydride from naphthalene	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene	(T)
K026	Stripping still tails from the production of methy ethyl pyridines	(T)
K027	Centrifuge and distillation residues from toluene diisocyanate production	(R,T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	(T)
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane	(T)

K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene	(T)
K083	Distillation bottoms from aniline production	(T)
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes	(T)
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene	(T)
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene	(T)
K095	Distillation bottoms from the production of 1,1,1-trichloroethane	(T)
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane	(T)
K103	Process residues from aniline extraction from the production of aniline	(T)
K104	Combined wastewater streams generated from nitrobenzene/aniline production	(T)
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes	(T)
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	(C,T)
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	(I,T)
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides	(T)
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from arboxylic acid hydrazides	(T)
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	(C,T)
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene	(T)
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine	(T)
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethane	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethane	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethane	(T)
K149	Distillation bottoms from the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups, This waste does not include still bottoms from the distillation of benzyl chloride.	(T)
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups	(T)
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha-, or methyl-, chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups	(T)
K156	Organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.	(T)
K157	Wastewaters, including scrubber waters, condenser waters, washwaters, and separation waters, from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.	(T)
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl n-butylcarbamate.	(T)
K159	Organics from the treatment of thiocarbamate wastes	(T)
K161	Purification solids; including filtration, evaporation, and centrifugation solids; bag house dust and floor sweepings from the production of dithiocarbamate acids and their salts. This listing does not include K125 or K126.	(R,T)
K174	Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer, including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater, unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C shall, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they shall provide appropriate documentation, e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc., that the terms of the exclusion were met	(T)
K175	Wastewater treatment sludges from the production of vinyl chloride monomer using	(T)

	mercuric chloride catalyst in an acetylene-based process	
K181	Nonwastewaters from the production of dyes and/or pigments, including nonwastewaters commingled at the point of generation with nonwastewaters from other processes, that, at the point of generation, contain mass loadings of any of the constituents identified in Subsection R315-261-32(c) that are equal to or greater than the corresponding Subsection R315-261-32(c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Class I or V lined landfill, (ii) disposed in a hazardous waste landfill unit subject to either Section R315-264-301 or 40 CFR 265.301, which is adopted by reference, (iii) disposed in other landfill units that are Class I or V lined landfills regulated under Rules R315-301 through 320 or meet the design criteria in Sections R315-264-301, or 40 CFR 265.301, which is adopted by reference, or (iv) treated in a combustion unit that is permitted under Rules R315-260 through 270, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in Subsection R315-261-32(b)(1). Section R315-261-32(d) describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under Sections R315-261-21 through 24 and R315-261-31 through 33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met	(T)
Inorganic chemicals:		
K071	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used	(T)
K073	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production	(T)
K106	Wastewater treatment sludge from the mercury cell process in chlorine production	(T)
K176	Baghouse filters from the production of antimony oxide, including filters from the production of intermediates, e.g., antimony metal or crude antimony oxide	(E)
K177	Slag from the production of antimony oxide that is speculatively accumulated or disposed, including slag from the production of intermediates, e.g., antimony metal or crude antimony oxide	(T)
K178	Residues from manufacturing and manufacturing-site storage of ferric chloride from acids formed during the production of titanium dioxide using the chloride-ilmenite process	(T)
Pesticides:		
K031	By-product salts generated in the production of MSMA and cacodylic acid	(T)
K032	Wastewater treatment sludge from the production of chlordane	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane	(T)
K035	Wastewater treatment sludges generated in the production of creosote	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton	(T)
K037	Wastewater treatment sludges from the production of disulfoton	(T)
K038	Wastewater from the washing and stripping of phorate production	(T)
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate	(T)
K040	Wastewater treatment sludge from the production of phorate	(T)
K041	Wastewater treatment sludge from the production of toxaphene	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane	(T)
K098	Untreated process wastewater from the production of toxaphene	(T)
K099	Untreated wastewater from the production of 2,4-D	(T)
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts	(C,T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts	(T)
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide	(C,T)
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide	(T)
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives	(R)
K045	Spent carbon from the treatment of wastewater containing explosives	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	(T)
K047	Pink/red water from TNT operations	(R)
Petroleum refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry	(T)
K049	Slop oil emulsion solids from the petroleum refining industry	(T)

K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry	(T)
K051	API separator sludge from the petroleum refining industry	(T)
K052	Tank bottoms, leaded, from the petroleum refining industry	(T)
K169	Crude oil storage tank sediment from petroleum refining operations	(T)
K170	Clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations	(T)
K171	Spent Hydrotreating catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, this listing does not include inert support media	(I,T)
K172	Spent Hydrorefining catalyst from petroleum refining operations, including guard beds used to desulfurize feeds to other catalytic reactors, this listing does not include inert support media	(I,T)
Iron and steel:		
K061	Emission control dust/sludge from the primary production of steel in electric furnaces	(T)
K062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry, SIC Codes 331 and 332	(C,T)
Primary aluminum:		
K088	Spent potliners from primary aluminum reduction	(T)
Secondary lead:		
K069	Emission control dust/sludge from secondary lead smelting. Note: This listing is stayed administratively for sludge generated from secondary acid scrubber systems. The stay will remain in effect until further administrative action is taken. If EPA takes further action effecting this stay, EPA will publish a notice of the action in the Federal Register	(T)
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting	(T)
Veterinary pharmaceuticals:		
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds	(T)
Ink formulation:		
K086	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead	(T)
Coking:		
K060	Ammonia still lime sludge from coking operations	(T)
K087	Decanter tank tar sludge from coking operations	(T)
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087, decanter tank tar sludges from coking operations	(T)
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal	(T)
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal	(T)
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal	(T)
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal	(T)
K147	Tar storage tank residues from coal tar refining	(T)
K148	Residues from coal tar distillation, including but not limited to, still bottoms	(T)

(b) Listing Specific Definitions:

(1) For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(c) K181 Listing Levels. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

TABLE

Constituent	Chemical abstracts No.	Mass levels (kg/yr)
Aniline	62-53-3	9,300
o-Anisidine	90-04-0	110
4-Chloroaniline	106-47-8	4,800
p-Cresidine	120-71-8	660
2,4-Dimethylaniline	95-68-1	100
1,2-Phenylenediamine	95-54-5	710
1,3-Phenylenediamine	108-45-2	1,200

(d) Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181. The procedures described in Subsections R315-261-32(d)(1) through(d)(3) and (d)(5) establish when nonwastewaters from the production of dyes/pigments would not be hazardous, these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in Subsection R315-261-32(a). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in

Subsection R315-261-32(a), then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator shall maintain documentation as described in Subsection R315-261-32(d)(4).

(1) Determination based on no K181 constituents. Generators that have knowledge; e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed; that their wastes contain none of the K181 constituents, see Subsection R315-261-32(c), can use their knowledge to determine that their waste is not K181. The generator shall document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(2) Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes; e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed; to conclude that annual mass loadings for the K181 constituents are below the listing levels of Subsection R315-261-32(c). To make this determination, the generator shall:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator shall comply with the requirements of Subsection R315-261-32(d)(3) for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(iv) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The quantity of dyes and/or pigment nonwastewaters generated.

(B) The relevant process information used.

(C) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

(3) Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator shall perform all of the steps described in Subsections R315-261-32(d)(3)(i) through (d)(3)(xi) in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents, see Subsection R315-261-32(c), are reasonably expected to be present in the wastes based on knowledge of the wastes; e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed.

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator shall comply with the procedures for using knowledge described in Subsection R315-261-32(d)(2) and keep the records described in Subsection R315-261-32(d)(2)(iv). For determinations based on sampling and analysis, the generator shall comply with the sampling and analysis and recordkeeping requirements described in Subsections R315-261-32(d)(3)(iii) through (xi).

(iii) Develop a waste sampling and analysis plan, or modify an existing plan, to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan shall include:

(A) A discussion of the number of samples needed to characterize the wastes fully;

(B) The planned sample collection method to obtain representative waste samples;

(C) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.

(D) A detailed description of the test methods to be used, including sample preparation, clean up, if necessary, and determinative methods.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(A) The sampling and analysis shall be unbiased, precise, and representative of the wastes.

(B) The analytical measurements shall be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of Subsection R315-261-32(c).

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings, product of concentrations and waste quantity.

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181 constituents listed in Subsection R315-261-32(c) generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The sampling and analysis plan.

(B) The sampling and analysis results, including QA/QC data.

(C) The quantity of dyes and/or pigment nonwastewaters generated.

(D) The calculations performed to determine annual mass loadings.

(xi) Nonhazardous waste determinations shall be conducted annually to verify that the wastes remain nonhazardous.

(A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(B) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(C) If the annual testing requirements are suspended, the generator shall keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change shall be retained.

(4) Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator shall maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is

subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(5) Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the hazardous waste requirements during the interim period, the generator could be subject to an enforcement action for improper management.

R315-261-33. Lists of Hazardous Wastes - Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-261-2(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 Subsections R315-261-33(e) or (f).

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Subsection R315-261-33(e) or (f).

(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 Subsection R315-261-33(e) or (f), unless the container is empty as defined in Subsection R315-261-7(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 spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsection R315-261-33(e) or (f), 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 Subsection R315-261-33(e) or (f). The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in..." 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 Subsection R315-261-33(e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in Subsection R315-261-33(e) or (f), such waste shall be listed in either Sections R315-261-31 or 32 or shall be identified as a hazardous waste by the characteristics set forth in Sections R315-261-20 through 24.

(e) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in Subsections R315-261-33(a) through (d), are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in Subsection R315-261-5(e). For the convenience of the regulated community the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number. These wastes and their corresponding EPA Hazardous Waste Numbers are:

TABLE

Hazardous waste No.	Chemical abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P070	116-06-3	Aldicarb
P203	1646-88-4	Aldicarb sulfone.
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H3 AsO4
P012	1327-53-3	Arsenic oxide As2 O3
P011	1303-28-2	Arsenic oxide As2 O5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl-
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-(1-hydroxy-2-(methylamino)ethyl)-, (R)-
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P014	108-98-5	Benzenethiol
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-,methylcarbamate.
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with (3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo(2,3-b)indol-5-ylmethylcarbamate ester (1:1).
P001	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium powder
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-methylamino)carbonyl) oxime
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN)2

P189	55285-14-8	Carbamic acid, ((dibutylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl- 7-benzofuranyl ester.
P191	644-64-4	Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl)-5-methyl-1H- pyrazol-3-yl ester.
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1- (1-methylethyl)-1H-pyrazol-5-yl ester.
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester.
P127	1563-66-2	Carbofuran.
P022	75-15-0	Carbon disulfide
P095	75-44-5	Carbonic dichloride
P189	55285-14-8	Carbosulfan.
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P027	542-76-7	3-Chloropropionitrile
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P202	64-00-6	m-Cumenyl methylcarbamate.
P030		Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P016	542-88-1	Dichloromethyl ether
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P038	692-42-2	Diethylarsine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa- chloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha,8alpha,8abeta)-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa- chloro-1,4,4a,5,8,8ahexahydro-, (1alpha, 4alpha, 4abeta, 5beta, 8beta,8abeta)-
P037	60-57-1	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta, 6aalpha,7beta, 7aalpha)-
P051	(1)72-20-8	2,7:3,6-Dimethanonaphth (2,3-b)oxirene, 3,4,5,6,9,9-hexachloro- 1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3alpha, 6alpha, 6abeta, 7beta, 7aalpha)-, and metabolites
P044	60-51-5	Dimethoate
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P191	644-64-4	Dimetilan.
P047	(1)534-52-1	4,6-Dinitro-o-cresol, and salts
P048	51-28-5	2,4-Dinitrophenol
P020	88-85-7	Dinoseb
P085	152-16-9	Diphosphoramide, octamethyl-
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P039	298-04-4	Disulfoton
P049	541-53-7	Dithiobiuret
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O- ((methylamino)-carbonyl)oxime.
P050	115-29-7	Endosulfan
P088	145-73-3	Endothall
P051	72-20-8	Endrin
P051	72-20-8	Endrin, and metabolites
P042	51-43-4	Epinephrine
P031	460-19-5	Ethanedinitrile
P194	23135-22-0	Ethanimidothioic acid, 2-(dimethylamino)-N-(((methylamino) carbonyl)oxy)-2-oxo-, methyl ester.
P066	16752-77-5	Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-, methyl ester
P101	107-12-0	Ethyl cyanide
P054	151-56-4	Ethyleneimine
P097	52-85-7	Famphur
P056	7782-41-4	Fluorine
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Fluoroacetic acid, sodium salt
P198	23422-53-9	Formetanate hydrochloride.
P197	17702-57-7	Formparanate.
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P059	76-44-8	Heptachlor
P062	757-58-4	Hexaethyl tetraphosphate
P116	79-19-6	Hydrazinecarbothioamide
P068	60-34-4	Hydrazine, methyl-
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P096	7803-51-2	Hydrogen phosphide
P060	465-73-6	Isodrin
P192	119-38-0	Isolan.
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate.
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate.
P092	62-38-4	Mercury, (acetato-O)phenyl-
P065	628-86-4	Mercury fulminate (R,T)
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P064	624-83-9	Methane, isocyanato-
P016	542-88-1	Methane, oxybis(chloro-
P112	509-14-8	Methane, tetranitro- (R)
P118	75-70-7	Methanethiol, trichloro-
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-(3-(((methylamino)-carbonyl)oxy)phenyl)-, monohydrochloride.
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-(2-methyl-4-(((methylamino)carbonyl)oxy)phenyl)-
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10- hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro- 3a,4,7,7a-tetrahydro-
P199	2032-65-7	Methiocarb.
P066	16752-77-5	Methomyl
P068	60-34-4	Methyl hydrazine
P064	624-83-9	Methyl isocyanate
P069	75-86-5	2-Methyllactonitrile
P071	298-00-0	Methyl parathion
P190	1129-41-5	Metolcarb.
P128	315-8-4	Mexacarbate.
P072	86-88-4	alpha-Naphthylthiourea
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO)4, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN)2
P075	(1)54-11-5	Nicotine, and salts
P076	10102-43-9	Nitric oxide
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P076	10102-43-9	Nitrogen oxide NO
P078	10102-44-0	Nitrogen oxide NO2
P081	55-63-0	Nitroglycerine (R)
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P085	152-16-9	Octamethylpyrophosphoramide
P087	20816-12-0	Osmium oxide OsO4, (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid
P194	23135-22-0	Oxamyl.
P089	56-38-2	Parathion
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P048	51-28-5	Phenol, 2,4-dinitro-
P047	(1)534-52-1	Phenol, 2-methyl-4,6-dinitro-, and salts
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester).
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate.
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate.
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P094	298-02-2	Phorate
P095	75-44-5	Phosgene
P096	7803-51-2	Phosphine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-(2- (ethylthio)ethyl) ester

P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl) ester
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-(2- (methylamino)-2-oxoethyl) ester
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097	52-85-7	Phosphorothioic acid, O-(4-((dimethylamino)sulfonyl)phenyl) O,O-dimethyl ester
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P204	57-47-6	Physostigmine.
P188	57-64-7	Physostigmine salicylate.
P110	78-00-2	Plumbane, tetraethyl-
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Potassium silver cyanide
P201	2631-37-0	Promecarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-((methylamino)carbonyl)oxime
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O- ((methylamino)carbonyl) oxime.
P101	107-12-0	Propanenitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P017	598-31-2	2-Propanone, 1-bromo-
P102	107-19-7	Propargyl alcohol
P003	107-02-8	2-Propenal
P005	107-18-6	2-Propen-1-ol
P067	75-55-8	1,2-Propylenimine
P102	107-19-7	2-Propyn-1-ol
P008	504-24-5	4-Pyridinamine
P075	(1)54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, and salts
P204	57-47-6	Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-.
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	(1)57-24-9	Strychnidin-10-one, and salts
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P108	(1)57-24-9	Strychnine, and salts
P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P109	3689-24-5	Tetraethyldithiopyrophosphate
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Tetranitromethane (R)
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl2 O3
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Thallium(I) sulfate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P045	39196-18-4	Thiofanox
P049	541-53-7	Thioimidodicarbonic diamide ((H2 N)C(S))2 NH
P014	108-98-5	Thiophenol
P116	79-19-6	Thiosemicarbazide
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P072	86-88-4	Thiourea, 1-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-
P185	26419-73-8	Tirpate.
P123	8001-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V2 O5
P120	1314-62-1	Vanadium pentoxide
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P001	(1)81-81-2	Warfarin, and salts, when present at concentrations greater than 0.3%
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN)2
P122	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)
P205	137-30-4	Ziram.
P001	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, and salts, when present at concentrations greater than 0.3%
P001	(1)81-81-2	Warfarin, and salts, when present at concentrations greater than 0.3%
P002	591-08-2	Acetamide, -(aminothioxomethyl)-
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P003	107-02-8	2-Propenal
P004	309-00-2	Aldrin
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a,- hexahydro-, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha,8abeta)-
P005	107-18-6	Allyl alcohol
P005	107-18-6	2-Propen-1-ol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P008	504-24-5	4-Aminopyridine
P008	504-24-5	4-Pyridinamine
P009	131-74-8	Ammonium picrate (R)
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P010	7778-39-4	Arsenic acid H3 AsO4
P011	1303-28-2	Arsenic oxide As2 O5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic oxide As2 O3
P012	1327-53-3	Arsenic trioxide
P013	542-62-1	Barium cyanide
P014	108-98-5	Benzenethiol
P014	108-98-5	Thiophenol
P015	7440-41-7	Beryllium powder
P016	542-88-1	Dichloromethyl ether
P016	542-88-1	Methane, oxybis(chloro-
P017	598-31-2	Bromoacetone
P017	598-31-2	2-Propanone, 1-bromo-
P018	357-57-3	Brucine
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P020	88-85-7	Dinoseb
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide Ca(CN)2
P022	75-15-0	Carbon disulfide
P023	107-20-0	Acetaldehyde, chloro-
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	Benzenamine, 4-chloro-
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P027	542-76-7	3-Chloropropionitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P028	100-44-7	Benzene, (chloromethyl)-
P028	100-44-7	Benzyl chloride
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P030		Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P031	460-19-5	Ethanedinitrile
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P036	696-28-6	Arsonous dichloride, phenyl-
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P037	60-57-1	2,7:3,6-Dimethanonaphth(2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta, 2aalpha, 3beta, 6beta,6aalpha,7beta, 7aalpha)-
P038	692-42-2	Arsine, diethyl-
P038	692-42-2	Diethylarsine
P039	298-04-4	Disulfoton
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-(2- (ethylthio)ethyl) ester
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester
P042	51-43-4	1,2-Benzenediol, 4-(1-hydroxy-2-

		(methylamino)ethyl)-, (R)-
P042	51-43-4	Epinephrine
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P044	60-51-5	Dimethoate
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-(2-(methyl amino)-2-oxoethyl) ester
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-((methylamino)carbonyl) oxime
P045	39196-18-4	Thiofanox
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P047	(1)534-52-1	4,6-Dinitro-o-cresol, and salts
P047	(1)534-52-1	Phenol, 2-methyl-4,6-dinitro-, and salts
P048	51-28-5	2,4-Dinitrophenol
P048	51-28-5	Phenol, 2,4-dinitro-
P049	541-53-7	Dithiobiuret
P049	541-53-7	Thioimidodicarbonic diamide ((H2 N)C(S))2 NH
P050	115-29-7	Endosulfan
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P051	(1)72-20-8	2,7:3,6-Dimethanonaphth (2,3-b)oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha, 2beta,2abeta, 3alpha, 6alpha, 6abeta,7beta, 7aalpha)-, and metabolites
P051	72-20-8	Endrin
P051	72-20-8	Endrin, and metabolites
P054	151-56-4	Aziridine
P054	151-56-4	Ethyleneimine
P056	7782-41-4	Fluorine
P057	640-19-7	Acetamide, 2-fluoro-
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P058	62-74-8	Fluoroacetic acid, sodium salt
P059	76-44-8	Heptachlor
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexa-chloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha,4abeta,5beta, 8beta,8abeta)-
P060	465-73-6	Isodrin
P062	757-58-4	Hexaethyl tetraphosphate
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P064	624-83-9	Methane, isocyanato-
P064	624-83-9	Methyl isocyanate
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P065	628-86-4	Mercury fulminate (R,T)
P066	16752-77-5	Ethanimidothioic acid, N-(((methylamino)carbonyl)oxy)-, methyl ester
P066	16752-77-5	Methomyl
P067	75-55-8	Aziridine, 2-methyl-
P067	75-55-8	1,2-Propylenimine
P068	60-34-4	Hydrazine, methyl-
P068	60-34-4	Methyl hydrazine
P069	75-86-5	2-Methyllactonitrile
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P070	116-06-3	Aldicarb
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-((methylamino)carbonyl)oxime
P071	298-00-0	Methyl parathion
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P072	86-88-4	alpha-Naphthylthiourea
P072	86-88-4	Thiourea, 1-naphthalenyl-
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl Ni(CO)4, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cyanide Ni(CN)2
P075	(1)54-11-5	Nicotine, and salts
P075	(1)54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, S)-, and salts
P076	10102-43-9	Nitric oxide
P076	10102-43-9	Nitrogen oxide NO
P077	100-01-6	Benzenamine, 4-nitro-
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P078	10102-44-0	Nitrogen oxide NO2
P081	55-63-0	Nitroglycerine (R)
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P082	62-75-9	Methanamine, -methyl-N-nitroso-
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P084	4549-40-0	Vinylamine, -methyl-N-nitroso-
P085	152-16-9	Diphosphoramide, octamethyl-
P085	152-16-9	Octamethylpyrophosphoramide
P087	20816-12-0	Osmium oxide OsO4, (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	Endothall
P088	145-73-3	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid
P089	56-38-2	Parathion
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P092	62-38-4	Mercury, (acetato-O)phenyl-
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P093	103-85-5	Thiourea, phenyl-
P094	298-02-2	Phorate
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-((ethylthio)methyl) ester
P095	75-44-5	Carbonic dichloride
P095	75-44-5	Phosgene
P096	7803-51-2	Hydrogen phosphide
P096	7803-51-2	Phosphine
P097	52-85-7	Famphur
P097	52-85-7	Phosphorothioic acid, O-(4-((dimethylamino)sulfonyl)phenyl) O,O-dimethyl ester
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P099	506-61-6	Potassium silver cyanide
P101	107-12-0	Ethyl cyanide
P101	107-12-0	Propanenitrile
P102	107-19-7	Propargyl alcohol
P102	107-19-7	2-Propyn-1-ol
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P108	(1)157-24-9	Strychnidin-10-one, and salts
P108	(1)157-24-9	Strychnine, and salts
P109	3689-24-5	Tetraethyldithiopyrophosphate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P110	78-00-2	Plumbane, tetraethyl-
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Methane, tetranitro-(R)
P112	509-14-8	Tetranitromethane (R)
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl2 O3
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P114	12039-52-0	Tetraethyldithiopyrophosphate
P115	7446-18-6	Thiodiphosphoric acid, tetraethyl ester
P115	7446-18-6	Plumbane, tetraethyl-
P116	79-19-6	Tetraethyl lead
P116	79-19-6	Thiosemicarbazide
P118	75-70-7	Methanethiol, trichloro-
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Ammonium vanadate
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V2O5
P120	1314-62-1	Vanadium pentoxide
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide Zn(CN)2
P122	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations greater than 10% (R,T)
P123	8001-35-2	Toxaphene
P127	1563-66-2	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-, methylcarbamate.
P127	1563-66-2	Carbofuran
P128	315-8-4	Mexacarbate
P128	315-18-4	Phenol, 4-(dimethylamino)-3,5-dimethyl-, methylcarbamate (ester)
P185	26419-73-8	1,3-Dithiolane-2-carboxaldehyde, 2,4-dimethyl-, O-((methylamino)-carbonyl)oxime.
P185	26419-73-8	Tirpate
P188	57-64-7	Benzoic acid, 2-hydroxy-, compd. with

		(3aS-cis)-1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethylpyrrolo(2,3-b)indol-5-yl methylcarbamate ester (1:1)
P188	57-64-7	Physostigmine salicylate
P189	55285-14-8	Carbamic acid, ((dibutylamino)-thio)methyl-, 2,3-dihydro-2,2-dimethyl-7-benzofuranyl ester
P189	55285-14-8	Carbosulfan
P190	1129-41-5	Carbamic acid, methyl-, 3-methylphenyl ester
P190	1129-41-5	Metolcarb
P191	644-64-4	Carbamic acid, dimethyl-, 1-((dimethyl-amino)carbonyl)-5-methyl-1H-pyrazol-3-yl ester
P191	644-64-4	Dimetilan
P192	119-38-0	Carbamic acid, dimethyl-, 3-methyl-1-(1-methylethyl)-1H-pyrazol-5-yl ester
P192	119-38-0	Isolan
P194	23135-22-0	Ethanimidthioic acid, 2-(dimethylamino)-N- (((methylamino) carbonyl)oxy)-2-oxo-, methyl ester
P194	23135-22-0	Oxamyl
P196	15339-36-3	Manganese, bis(dimethylcarbamodithioato-S,S')-,
P196	15339-36-3	Manganese dimethyldithiocarbamate
P197	17702-57-7	Formparanate
P197	17702-57-7	Methanimidamide, N,N-dimethyl-N'-(2-methyl-4-(((methylamino)carbonyl)oxy)phenyl)-
P198	23422-53-9	Formetanate hydrochloride
P198	23422-53-9	Methanimidamide, N,N-dimethyl-N'-(3-(((methylamino)-carbonyl)oxy)phenyl)-monohydrochloride
P199	2032-65-7	Methiocarb
P199	2032-65-7	Phenol, (3,5-dimethyl-4-(methylthio)-, methylcarbamate
P201	2631-37-0	Phenol, 3-methyl-5-(1-methylethyl)-, methyl carbamate
P201	2631-37-0	Promecarb
P202	64-00-6	m-Cumenyl methylcarbamate
P202	64-00-6	3-Isopropylphenyl N-methylcarbamate
P202	64-00-6	Phenol, 3-(1-methylethyl)-, methyl carbamate
P203	1646-88-4	Aldicarb sulfone
P203	1646-88-4	Propanal, 2-methyl-2-(methyl-sulfonyl)-, O- ((methylamino)carbonyl) oxime
P204	57-47-6	Physostigmine
P204	57-47-6	Pyrrolo(2,3-b)indol-5-ol, 1,2,3,3a,8,8a-hexahydro-1,3a,8-trimethyl-, methylcarbamate (ester), (3aS-cis)-
P205	137-30-4	Zinc, bis(dimethylcarbamodithioato-S,S')-,
P205	137-30-4	Ziram
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.)

Note (1) CAS Number given for parent compound only.

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Subsections R315-261-33(a) through (d), are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in Subsection R315-261-5(a) and (g). For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability) and C (Corrosivity). Absence of a letter indicates that the compound is only listed for toxicity. Wastes are first listed in alphabetical order by substance and then listed again in numerical order by Hazardous Waste Number. These wastes and their corresponding EPA Hazardous Waste Numbers are:

TABLE

Hazardous waste No.	Chemical abstracts No.	Substance
U394	30558-43-1	A2213.
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U240	(1)94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts and esters
U112	141-78-6	Acetic acid ethyl ester (I)
U144	301-04-2	Acetic acid, lead(2+) salt
U214	563-68-8	Acetic acid, thallium(1+) salt
see F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
U002	67-64-1	Acetone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-(((aminocarbonyl)oxy) methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS-(1aalpha, 8beta, 8aalpha,8balpha))-
U280	101-27-9	Barban.
U278	22781-23-3	Bendiocarb.
U364	22961-82-6	Bendiocarb phenol.
U271	17804-35-2	Benomyl.
U157	56-49-5	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-
U016	225-51-4	Benz(c)acridine
U017	98-87-3	Benzal chloride
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U018	56-55-3	Benz(a)anthracene
U094	57-97-6	Benz(a)anthracene, 7,12-dimethyl-
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U328	95-53-4	Benzenamine, 2-methyl-
U353	106-49-0	Benzenamine, 4-methyl-
U158	101-14-4	Benzenamine, 4,4'-methylenebis(2-chloro-
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U019	71-43-2	Benzene (I,T)
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U035	305-03-3	Benzenebutanoic acid, 4-(bis(2-chloroethyl)amino)-
U037	108-90-7	Benzene, chloro-
U221	25376-45-8	Benzenediamine, ar-methyl-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U070	95-50-1	Benzene, 1,2-dichloro-
U071	541-73-1	Benzene, 1,3-dichloro-
U072	106-46-7	Benzene, 1,4-dichloro-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene) bis(4-chloro-
U017	98-87-3	Benzene, (dichloromethyl)-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	1330-20-7	Benzene, dimethyl- (I)
U201	108-46-3	1,3-Benzenediol
U127	118-74-1	Benzene, hexachloro-
U056	110-82-7	Benzene, hexahydro- (I)
U220	108-88-3	Benzene, methyl-
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U055	98-82-8	Benzene, (1-methylethyl)- (I)
U169	98-95-3	Benzene, nitro-

U183	608-93-5	Benzene, pentachloro-
U185	82-68-8	Benzene, pentachloronitro-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis(4-chloro-
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis(4- methoxy-
U023	98-07-7	Benzene, (trichloromethyl)-
U234	99-35-4	Benzene, 1,3,5-trinitro-
U021	92-87-5	Benzidine
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate.
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U064	189-55-9	Benzo(rst)pentaphene
U248	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts, when present at concentrations of 0.3% or less
U022	50-32-8	Benzo(a)pyrene
U197	106-51-4	p-Benzoquinone
U023	98-07-7	Benzotrichloride (C,R,T)
U085	1464-53-5	2,2'-Bioxirane
U021	92-87-5	(1,1'-Biphenyl)-4,4'-diamine
U073	91-94-1	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-
U091	119-90-4	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-
U095	119-93-7	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-
U225	75-25-2	Bromoform
U030	101-55-3	4-Bromophenyl phenyl ether
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U031	71-36-3	1-Butanol (I)
U159	78-93-3	2-Butanone (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U053	4170-30-3	2-Butenal
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-((2,3-dihydroxy- 2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)- 2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S- (1alpha(Z),7(2S*,3R*),7aalpha))-
U031	71-36-3	n-Butyl alcohol (I)
U136	75-60-5	Cacodylic acid
U032	13765-19-0	Calcium chromate
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester.
U271	17804-35-2	Carbamic acid, (1-((butylamino)carbonyl)-1H-benzimidazol-2-yl)-, methyl ester.
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester.
U238	51-79-6	Carbamic acid, ethyl ester
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester.
U409	23564-05-8	Carbamic acid, (1,2-phenylenebis (iminocarbonothioyl))bis-, dimethyl ester.
U097	79-44-7	Carbamic chloride, dimethyl-
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3,3-trichloro-2-propenyl) ester.
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester.
U114	(1)111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts and esters
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-dichloro-2-propenyl) ester
U279	63-25-2	Carbaryl.
U372	10605-21-7	Carbendazim.
U367	1563-38-8	Carbofuran phenol.
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U033	353-50-4	Carbonic difluoride
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U033	353-50-4	Carbon oxyfluoride (R,T)
U211	56-23-5	Carbon tetrachloride
U034	75-87-6	Chloral
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha and gamma isomers
U026	494-03-1	Chlornaphazin
U037	108-90-7	Chlorobenzene
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U042	110-75-8	2-Chloroethyl vinyl ether
U044	67-66-3	Chloroform
U046	107-30-2	Chloromethyl methyl ether
U047	91-58-7	beta-Chloronaphthalene
U048	95-57-8	o-Chlorophenol
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U032	13765-19-0	Chromic acid H2 CrO4, calcium salt
U050	218-01-9	Chrysene
U051		Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Cumene (I)
U246	506-68-3	Cyanogen bromide (CN)Br
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U056	110-82-7	Cyclohexane (I)
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha, 5alpha, 6beta)-
U057	108-94-1	Cyclohexanone (I)
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U058	50-18-0	Cyclophosphamide
U240	(1)94-75-7	2,4-D, salts and esters
U059	20830-81-3	Daunomycin
U060	72-54-8	DDD
U061	50-29-3	DDT
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz(a,h)anthracene
U064	189-55-9	Dibenzo(a,i)pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-4	1,1-Dichloroethylene
U079	156-60-5	1,2-Dichloroethylene
U025	111-44-4	Dichloroethyl ether
U027	108-60-1	Dichloroisopropyl ether
U024	111-91-1	Dichloromethoxy ethane
U081	120-83-2	2,4-Dichlorophenol
U082	87-65-0	2,6-Dichlorophenol
U084	542-75-6	1,3-Dichloropropene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U108	123-91-1	1,4-Diethyleneoxide
U028	117-81-7	Diethylhexyl phthalate
U395	5952-26-1	Diethylene glycol, dicarbamate.
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U090	94-58-6	Dihydrosafrole
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	7,12-Dimethylbenz(a)anthracene
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U099	540-73-8	1,2-Dimethylhydrazine
U101	105-67-9	2,4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U404	121-44-8	Ethanamine, N,N-diethyl-
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-

U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U025	111-44-4	Ethane, 1,1'-oxybis(2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide
U226	71-55-6	Ethane, 1,1,1-trichloro-
U227	79-00-5	Ethane, 1,1,2-trichloro-
U410	59669-26-0	Ethanimidothioic acid, N,N'-(thiobis((methylimino)carbonyloxy))bis-, dimethyl ester
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester.
U359	110-80-5	Ethanol, 2-ethoxy-
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate.
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro-
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U238	51-79-6	Ethyl carbamate (urethane)
U117	60-29-7	Ethyl ether (I)
U114	(1)111-54-6	Ethylenebisdithiocarbamic acid, salts and esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)
U116	96-45-7	Ethylenethiourea
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U147	108-31-6	2,5-Furandione
U213	109-99-9	Furan, tetrahydro-(I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl)amino)-
U126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H2 S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno(1,2,3-cd)pyrene
U190	85-44-9	1,3-Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I, T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-9	Methane, bromo-
U045	74-87-3	Methane, chloro- (I, T)
U046	107-30-2	Methane, chloromethoxy-
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U138	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I, T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta(cd)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide
U186	504-60-9	1-Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U226	71-55-6	Methyl chloroform
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I,T)
U161	108-10-1	4-Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil
U010	50-07-7	Mitomycin C
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-7	1-Naphthalenamine
U168	91-59-8	2-Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U166	130-15-4	1,4-Naphthalenedione
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'- dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt
U279	63-25-2	1-Naphthalenol, methylcarbamate.
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium(1+) salt
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U171	79-46-9	2-Nitropropane (I,T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-8	5-Nitro-o-toluidine
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U115	75-21-8	Oxirane (I,T)
U126	765-34-4	Oxiranecarboxyaldehyde
U041	106-89-8	Oxirane, (chloromethyl)-
U182	123-63-7	Paraldehyde

U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Pentachloroethane
U185	82-68-8	Pentachloronitrobenzene (PCNB)
See F027	87-86-5	Pentachlorophenol
U161	108-10-1	Pentanol, 4-methyl-
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U048	95-57-8	Phenol, 2-chloro-
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	Phenol, 2,6-dichloro-
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U101	105-67-9	Phenol, 2,4-dimethyl-
U052	1319-77-3	Phenol, methyl-
U132	70-30-4	Phenol, 2,2'-methylenebis(3,4,6-trichloro-
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate.
U170	100-02-7	Phenol, 4-nitro-
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
U150	148-82-3	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U189	1314-80-3	Phosphorus sulfide (R)
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U179	100-75-4	Piperidine, 1-nitroso-
U192	23950-58-5	Pronamide
U194	107-10-8	1-Propanamine (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U110	142-84-7	1-Propanamine, N-propyl- (I)
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U083	78-87-5	Propane, 1,2-dichloro-
U149	109-77-3	Propanedinitrile
U171	79-46-9	Propane, 2-nitro- (I,T)
U027	108-60-1	Propane, 2,2'-oxybis(2-chloro-
U193	1120-71-4	1,3-Propane sultone
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U002	67-64-1	2-Propanone (I)
U007	79-06-1	2-Propenamide
U084	542-75-6	1-Propene, 1,3-dichloro-
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	107-13-1	2-Propenenitrile
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U008	79-10-7	2-Propenoic acid (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U373	122-42-9	Propham.
U411	114-26-1	Propoxur.
U387	52888-80-9	Prosulfocarb.
U194	107-10-8	n-Propylamine (I,T)
U083	78-87-5	Propylene dichloride
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U196	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl-
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS2 (R,T)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex (2,4,5-TP)
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-5	2,4,5-T
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	thallium chloride TlCl
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Thioacetamide
U410	59669-26-0	Thiodicarb.
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide ((H2 N)C(S))2 S2, tetramethyl-
U409	23564-05-8	Thiophanate-methyl.
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4	o-Toluidine
U353	106-49-0	p-Toluidine
U222	636-21-5	o-Toluidine hydrochloride
U389	2303-17-5	Triallate.
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol
U404	121-44-8	Triethylamine.
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil shallard
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-
U043	75-01-4	Vinyl chloride
U248	(1)81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl) oxy)-, methyl ester, (3beta,16beta, 17alpha,18beta, 20alpha)-
U249	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations of 10% or less
U001	75-07-0	Acetaldehyde (I)
U001	75-07-0	Ethanal (I)
U002	67-64-1	Acetone (I)
U002	67-64-1	2-Propanone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U004	98-86-2	Ethanone, 1-phenyl-
U005	53-96-3	Acetamide, -9H-fluoren-2-yl-
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U007	79-06-1	2-Propenamide
U008	79-10-7	Acrylic acid (I)
U008	79-10-7	2-Propenoic acid (I)
U009	107-13-1	Acrylonitrile
U009	107-13-1	2-Propenenitrile
U010	50-07-7	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-(((aminocarbonyl) oxy)methyl)-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, (1aS-(1aalpha, 8beta, 8aalpha,8balpha))-
U010	50-07-7	Mitomycin C
U011	61-82-5	Amitrole
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U012	62-53-3	Aniline (I,T)
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Auramine
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-
U015	115-02-6	Azaserine
U015	115-02-6	L-Serine, diazoacetate (ester)
U016	225-51-4	Benz(c)acridine
U017	98-87-3	Benzal chloride
U017	98-87-3	Benzene, (dichloromethyl)-
U018	56-55-3	Benz(a)anthracene
U019	71-43-2	Benzene (I,T)
U020	98-09-9	Benzenesulfonic acid chloride (C,R)

U020	98-09-9	Benzenesulfonyl chloride (C,R)
U021	92-87-5	Benzidine
U021	92-87-5	(1,1'-Biphenyl)-4,4'-diamine
U022	50-32-8	Benzo(a)pyrene
U023	98-07-7	Benzene, (trichloromethyl)-
U023	98-07-7	Benzotrichloride (C,R,T)
U024	111-91-1	Dichloromethoxy ethane
U024	111-91-1	Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-
U025	111-44-4	Dichloroethyl ether
U025	111-44-4	Ethane, 1,1'-oxybis(2-chloro-
U026	494-03-1	Chlornaphazin
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U027	108-60-1	Dichloroisopropyl ether
U027	108-60-1	Propane, 2,2'-oxybis(2-chloro-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U028	117-81-7	Diethylhexyl phthalate
U029	74-83-9	Methane, bromo-
U029	74-83-9	Methyl bromide
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U030	101-55-3	4-Bromophenyl phenyl ether
U031	71-36-3	1-Butanol (I)
U031	71-36-3	n-Butyl alcohol (I)
U032	13765-19-0	Calcium chromate
U032	13765-19-0	Chromic acid H2 CrO4, calcium salt
U033	353-50-4	Carbonic difluoride
U033	353-50-4	Carbon oxyfluoride (R,T)
U034	75-87-6	Acetaldehyde, trichloro-
U034	75-87-6	Chloral
U035	305-03-3	Benzenebutanoic acid, 4-(bis(2-chloroethyl)amino)-
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha and gamma isomers
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U037	108-90-7	Benzene, chloro-
U037	108-90-7	Chlorobenzene
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U041	106-89-8	Epichlorohydrin
U041	106-89-8	Oxirane, (chloromethyl)-
U042	110-75-8	2-Chloroethyl vinyl ether
U042	110-75-8	Ethene, (2-chloroethoxy)-
U043	75-01-4	Ethene, chloro-
U043	75-01-4	Vinyl chloride
U044	67-66-3	Chloroform
U044	67-66-3	Methane, trichloro-
U045	74-87-3	Methane, chloro- (I,T)
U045	74-87-3	Methyl chloride (I,T)
U046	107-30-2	Chloromethyl methyl ether
U046	107-30-2	Methane, chloromethoxy-
U047	91-58-7	beta-Chloronaphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U048	95-57-8	o-Chlorophenol
U048	95-57-8	Phenol, 2-chloro-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U050	218-01-9	Chrysene
U051		Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U052	1319-77-3	Phenol, methyl-
U053	4170-30-3	2-Butenal
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Benzene, (1-methylethyl)-(I)
U055	98-82-8	Cumene (I)
U056	110-82-7	Benzene, hexahydro-(I)
U056	110-82-7	Cyclohexane (I)
U057	108-94-1	Cyclohexanone (I)
U058	50-18-0	Cyclophosphamide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U059	20830-81-3	Daunomycin
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-((3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy)-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis(4-chloro-
U060	72-54-8	DDD
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4-chloro-
U061	50-29-3	DDT
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3-di chloro-2-propenyl) ester
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz(a,h)anthracene
U064	189-55-9	Benzo(rst)pentaphene
U064	189-55-9	Dibenzo(a,i)pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U067	106-93-4	Ethane, 1,2-dibromo-
U067	106-93-4	Ethylene dibromide
U068	74-95-3	Methane, dibromo-
U068	74-95-3	Methylene bromide
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	Benzene, 1,2-dichloro-
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	Benzene, 1,3-dichloro-
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	Benzene, 1,4-dichloro-
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dichloro-
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	2-Butene, 1,4-dichloro-(I,T)
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U075	75-71-8	Methane, dichlorodifluoro-
U076	75-34-3	Ethane, 1,1-dichloro-
U076	75-34-3	Ethylidene dichloride
U077	107-06-2	Ethane, 1,2-dichloro-
U077	107-06-2	Ethylene dichloride
U078	75-35-4	1,1-Dichloroethylene
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	1,2-Dichloroethylene
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U080	75-09-2	Methane, dichloro-
U080	75-09-2	Methylene chloride
U081	120-83-2	2,4-Dichlorophenol
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	2,6-Dichlorophenol
U082	87-65-0	Phenol, 2,6-dichloro-
U083	78-87-5	Propane, 1,2-dichloro-
U083	78-87-5	Propylene dichloride
U084	542-75-6	1,3-Dichloropropene
U084	542-75-6	1-Propene, 1,3-dichloro-
U085	1464-53-5	2,2'-Bioxirane
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U086	1615-80-1	N,N'-Diethylhydrazine
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U090	94-58-6	Dihydrosafrole
U091	119-90-4	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy-
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U092	124-40-3	Methanamine, -methyl-(I)
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	Benz(a)anthracene, 7,12-dimethyl-
U094	57-97-6	7,12-Dimethylbenz(a)anthracene
U095	119-93-7	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl-
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl-(R)
U097	79-44-7	Carbamic chloride, dimethyl-
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	1,2-Dimethylhydrazine
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U101	105-67-9	2,4-Dimethylphenol

U101	105-67-9	Phenol, 2,4-dimethyl-
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U103	77-78-1	Sulfuric acid, dimethyl ester
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Diethyleneoxide
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U110	142-84-7	Dipropylamine (I)
U110	142-84-7	1-Propanamine, N-propyl-(I)
U111	621-64-7	Di-n-propylnitrosamine
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U112	141-78-6	Acetic acid ethyl ester (I)
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U114	(1)111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts and esters
U114	(1)111-54-6	Ethylenebisdithiocarbamic acid, salts and esters
U115	75-21-8	Ethylene oxide (I,T)
U115	75-21-8	Oxirane (I,T)
U116	96-45-7	Ethylenethiourea
U116	96-45-7	2-Imidazolidinethione
U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U117	60-29-7	Ethyl ether (I)
U118	97-63-2	Ethyl methacrylate
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U119	62-50-0	Ethyl methanesulfonate
U119	62-50-0	Methanesulfonic acid, ethyl ester
U120	206-44-0	Fluoranthene
U121	75-69-4	Methane, trichlorofluoro-
U121	75-69-4	Trichloromonofluoromethane
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U124	110-00-9	Furfuran (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U125	98-01-1	Furfural (I)
U126	765-34-4	Glycidylaldehyde
U126	765-34-4	Oxiranecarboxyaldehyde
U127	118-74-1	Benzene, hexachloro-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U128	87-68-3	Hexachlorobutadiene
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-
U129	58-89-9	Lindane
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Ethane, hexachloro-
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U132	70-30-4	Phenol, 2,2'-methylenebis(3,4,6-trichloro-
U133	302-01-2	Hydrazine (R,T)
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H2S
U136	75-60-5	Arsinic acid, dimethyl-
U136	75-60-5	Cacodylic acid
U137	193-39-5	Indeno(1,2,3-cd)pyrene
U138	74-88-4	Methane, iodo-
U138	74-88-4	Methyl iodide
U140	78-83-1	Isobutyl alcohol (I,T)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta(cd)pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-((2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl)-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, (1S- (1alpha(Z),7(2S*,3R*), 7aalpha))-
U143	303-34-4	Lasiocarpine
U144	301-04-2	Acetic acid, lead(2+) salt
U144	301-04-2	Lead acetate
U145	7446-27-7	Lead phosphate
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U146	1335-32-6	Lead subacetate
U147	108-31-6	2,5-Furandione
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U149	109-77-3	Malononitrile
U149	109-77-3	Propanedinitrile
U150	148-82-3	Melphalan
U150	148-82-3	L-Phenylalanine, 4-(bis(2-chloroethyl)amino)-
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I,T)
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U153	74-93-1	Methanethiol (I,T)
U153	74-93-1	Thiomethanol (I,T)
U154	67-56-1	Methanol (I)
U154	67-56-1	Methyl alcohol (I)
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U155	91-80-5	Methapyrilene
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U157	56-49-5	Benz(j)aceanthrylene, 1,2-dihydro-3-methyl-
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	Benzenamine, 4,4'-methylenebis(2-chloro-
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U159	78-93-3	2-Butanone (I,T)
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U161	108-10-1	Methyl isobutyl ketone (I)
U161	108-10-1	4-Methyl-2-pentanone (I)
U161	108-10-1	Pentanol, 4-methyl-
U162	80-62-6	Methyl methacrylate (I,T)
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U163	70-25-7	Guanidine, -methyl-N'-nitro-N-nitroso-
U163	70-25-7	MNNG
U164	56-04-2	Methylthiouracil
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U165	91-20-3	Naphthalene
U166	130-15-4	1,4-Naphthalenedione
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	1-Naphthalenamine
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	2-Naphthalenamine
U168	91-59-8	beta-Naphthylamine
U169	98-95-3	Benzene, nitro-
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U170	100-02-7	Phenol, 4-nitro-
U171	79-46-9	2-Nitropropane (I,T)
U171	79-46-9	Propane, 2-nitro- (I,T)
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	Ethanamine, -ethyl-N-nitroso-
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	N-Nitroso-N-methylurea
U177	684-93-5	Urea, N-methyl-N-nitroso-
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U179	100-75-4	Piperidine, 1-nitroso-
U180	930-55-2	N-Nitrosopyrrolidine
U180	930-55-2	Pyrrolidine, 1-nitroso-
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U181	99-55-8	5-Nitro-o-toluidine
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U182	123-63-7	Paraldehyde
U183	608-93-5	Benzene, pentachloro-
U183	608-93-5	Pentachlorobenzene

U184	76-01-7	Ethane, pentachloro-
U184	76-01-7	Pentachloroethane
U185	82-68-8	Benzene, pentachloronitro-
U185	82-68-8	Pentachloronitrobenzene (PCNB)
U186	504-60-9	1-Methylbutadiene (I)
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Acetamide, -(4-ethoxyphenyl)-
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U189	1314-80-3	Phosphorus sulfide (R)
U189	1314-80-3	Sulfur phosphide (R)
U190	85-44-9	1,3-Isobenzofurandione
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U191	109-06-8	Pyridine, 2-methyl-
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U192	23950-58-5	Pronamide
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U193	1120-71-4	1,3-Propane sultone
U194	107-10-8	1-Propanamine (I,T)
U194	107-10-8	n-Propylamine (I,T)
U196	110-86-1	Pyridine
U197	106-51-4	p-Benzoquinone
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U200	50-55-5	Reserpine
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-((3,4,5-trimethoxybenzoyl)oxy)-, methyl ester,(3beta,16beta,17alpha,18beta,20alpha)-
U201	108-46-3	1,3-Benzenediol
U201	108-46-3	Resorcinol
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS2 (R,T)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-(((methylnitrosoamino)-carbonyl)amino)-
U206	18883-66-4	Streptozotocin
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Ethene, tetrachloro-
U210	127-18-4	Tetrachloroethylene
U211	56-23-5	Carbon tetrachloride
U211	56-23-5	Methane, tetrachloro-
U213	109-99-9	Furan, tetrahydro-(I)
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Acetic acid, thallium(1+) salt
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Nitric acid, thallium(1+) salt
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Ethanethioamide
U218	62-55-5	Thioacetamide
U219	62-56-6	Thiourea
U220	108-88-3	Benzene, methyl-
U220	108-88-3	Toluene
U221	25376-45-8	Benzenediamine, ar-methyl-
U221	25376-45-8	Toluenediamine
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U222	636-21-5	o-Toluidine hydrochloride
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U223	26471-62-5	Toluene diisocyanate (R,T)
U225	75-25-2	Bromoform
U225	75-25-2	Methane, tribromo-
U226	71-55-6	Ethane, 1,1,1-trichloro-
U226	71-55-6	Methyl chloroform
U226	71-55-6	1,1,1-Trichloroethane
U227	79-00-5	Ethane, 1,1,2-trichloro-
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Ethene, trichloro-
U228	79-01-6	Trichloroethylene
U234	99-35-4	Benzene, 1,3,5-trinitro-
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-((3,3'-dimethyl(1,1'-biphenyl)-4,4'-diyl)bis(azo)bis(5-amino-4-hydroxy)-, tetrasodium salt
U236	72-57-1	Trypan blue
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-(bis(2-chloroethyl)amino)-
U237	66-75-1	Uracil shallard
U238	51-79-6	Carbamic acid, ethyl ester
U238	51-79-6	Ethyl carbamate (urethane)
U239	1330-20-7	Benzene, dimethyl- (I,T)
U239	1330-20-7	Xylene (I)
U240	(1)94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts and esters
U240	(1)94-75-7	2,4-D, salts and esters
U243	1888-71-7	Hexachloropropene
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U244	137-26-8	Thioperoxydicarbonic diamide ((H2N)C(S))2 S2, tetramethyl-
U244	137-26-8	Thiram
U246	506-68-3	Cyanogen bromide (CN)Br
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis(4- methoxy-
U247	72-43-5	Methoxychlor
U248	(1)81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, and salts, when present at concentrations of 0.3% or less
U248	(1)81-81-2	Warfarin, and salts, when present at concentrations of 0.3% or less
U249	1314-84-7	Zinc phosphide Zn3 P2, when present at concentrations of 10% or less
U271	17804-35-2	Benomyl
U271	17804-35-2	Carbamic acid, (1-((butylamino)carbonyl)-1H-benzimidazol-2-yl)-, methyl ester
U278	22781-23-3	Bendiocarb
U278	22781-23-3	1,3-Benzodioxol-4-ol, 2,2-dimethyl-, methyl carbamate
U279	63-25-2	Carbaryl
U279	63-25-2	1-Naphthalenol, methylcarbamate
U280	101-27-9	Barban
U280	101-27-9	Carbamic acid, (3-chlorophenyl)-, 4-chloro-2-butynyl ester
U328	95-53-4	Benzenamine, 2-methyl-
U328	95-53-4	o-Toluidine
U353	106-49-0	Benzenamine, 4-methyl-
U353	106-49-0	p-Toluidine
U359	110-80-5	Ethanol, 2-ethoxy-
U359	110-80-5	Ethylene glycol monoethyl ether
U364	22961-82-6	Bendiocarb phenol
U364	22961-82-6	1,3-Benzodioxol-4-ol, 2,2-dimethyl-,
U367	1563-38-8	7-Benzofuranol, 2,3-dihydro-2,2-dimethyl-
U367	1563-38-8	Carbofuran phenol
U372	10605-21-7	Carbamic acid, 1H-benzimidazol-2-yl, methyl ester
U372	10605-21-7	Carbendazim
U373	122-42-9	Carbamic acid, phenyl-, 1-methylethyl ester
U373	122-42-9	Propham
U387	52888-80-9	Carbamothioic acid, dipropyl-, S-(phenylmethyl) ester
U387	52888-80-9	Prosulfocarb
U389	2303-17-5	Carbamothioic acid, bis(1-methylethyl)-, S- (2,3,3-trichloro-2-propenyl) ester
U389	2303-17-5	Triallate
U394	30558-43-1	A2213
U394	30558-43-1	Ethanimidothioic acid, 2-(dimethylamino)-N-hydroxy-2-oxo-, methyl ester
U395	5952-26-1	Diethylene glycol, dicarbamate
U395	5952-26-1	Ethanol, 2,2'-oxybis-, dicarbamate
U404	121-44-8	Ethanamine, N,N-diethyl-
U404	121-44-8	Triethylamine
U409	23564-05-8	Carbamic acid, (1,2-phenylenebis(iminocarbonothioyl))bis-, dimethyl ester
U409	23564-05-8	Thiophanate-methyl
U410	59669-26-0	Ethanimidothioic acid, N,N'-(thiobis((methylimino)carbonyloxy))bis-, dimethyl ester
U410	59669-26-0	Thiodicarb
U411	114-26-1	Phenol, 2-(1-methylethoxy)-, methylcarbamate
U411	114-26-1	Propoxur
See F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-

See F027	7-86-5	Pentachlorophenol
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
See F027	93-72-1	Silvex (2,4,5-TP)
See F027	93-76-5	2,4,5-T
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol

R315-261-35. Lists of Hazardous Wastes - 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 Subsections R315-261-35(b) and (c). 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 shall 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 Section R315-261-35;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with Section R315-261-35; or

(iii) Document cleaning and replacement in accordance with Section R315-261-35, 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 shall 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 shall be tested by using an appropriate method.

(B) "Not detected" means at or below the following lower method calibration limits (MCLs): The 2,3,7,8-TCDD-based MCL-0.01 parts per trillion (ppt), sample weight of 1000 g, IS spiking level of 1 ppt, final extraction volume of 10-50 microliters. For other congeners-multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

(iv) The generator shall 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 shall manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with Section R315-261-35 and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator shall 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 Section R315-261-35 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.

R315-261-39. Exclusions and Exemptions - Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) Storage. The broken CRTs shall be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container, i.e., a package or a vehicle, that is constructed, filled, and closed to minimize releases to the environment of CRT glass, including fine solid materials.

(2) Labeling. Each container in which the used, broken CRT is contained shall be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass " or "Leaded glass from televisions or computers." It shall also be labeled: "Do not mix with other glass materials."

(3) Transportation. The used, broken CRTs shall be transported in a container meeting the requirements of Subsections R315-261-39(a)(1)(ii) and (2).

(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in Subsection R315-261-39(c)(8). If they are used in a manner constituting disposal, they shall comply with the applicable

requirements of Sections R315-266-20 through 23 instead of the requirements of Section R315-261-39.

(5) Exports. In addition to the applicable conditions specified in Subsections R315-261-39(a)(1)through (4), exporters of used, broken CRTs shall comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.

(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-39(a)(5)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-39(a)(5)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA shall forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA shall notify the exporter in writing. EPA shall also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter shall provide EPA with a written renotification of the change, except for changes to the telephone number in Subsection R315-261-39(a)(5)(i)(A) and decreases in the quantity indicated pursuant to Subsection R315-261-39(a)(5)(i)(C). The shipment cannot take place until consent of the receiving country to the changes has been obtained, except for changes to information about points of entry and departure and transit countries pursuant to Subsections R315-261-39(a)(5)(i)(D) and (a)(5)(i)(H), and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs shall accompany the shipment of CRTs. The shipment shall conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs shall renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with Subsection R315-261-39(a)(5)(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters shall keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(x) CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:

(A) The name; EPA ID number, if applicable; and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(xi) Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in Section R315-260-10 are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of Subsection R315-261-39(a)(4).

(2) Processing.

(i) All activities specified in Subsections (ii) and (iii) of the definition of CRT Processing in Section R315-260-10 shall be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in Subsection R315-261-1(c)(8).

(d) Use constituting disposal: Glass from used CRTs

that is used in a manner constituting disposal shall comply with the requirements of Section R315-266-20 through 23 instead of the requirements of Section R315-261-39.

R315-261-40. Exclusions and Exemptions - Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of Subsection R315-261-39(a)(5), and if they are not speculatively accumulated as defined in Subsection R315-261-1(c)(8).

R315-261-41. Exclusions and Exemptions - Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) CRT exporters who export used, intact CRTs for reuse shall send a notification to EPA. This notification may cover export activities extending over a 12 month or lesser period.

(1) The notification shall be in writing, signed by the exporter, and include the following information:

(i) Name, mailing address, telephone number, and EPA ID number, if applicable, of the exporter of the used, intact CRTs;

(ii) The estimated frequency or rate at which the used, intact CRTs are to be exported for reuse and the period of time over which they are to be exported;

(iii) The estimated total quantity of used, intact CRTs specified in kilograms;

(iv) All points of entry to and departure from each transit country through which the used, intact CRTs will pass, a description of the approximate length of time the used, intact CRTs will remain in such country, and the nature of their handling while there;

(v) A description of the means by which each shipment of the used, intact CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.;

(vi) The name and address of the ultimate destination facility or facilities where the used, intact CRTs will be reused, refurbished, distributed, or sold for reuse and the estimated quantity of used, intact CRTs to be sent to each facility, as well as the name of any alternate destination facility or facilities;

(vii) A description of the manner in which the used, intact CRTs will be reused, including reuse after refurbishment, in the foreign country that will be receiving the used, intact CRTs; and

(viii) A certification signed by the CRT exporter that states: "I certify under penalty of law that the CRTs described in this notice are intact and fully functioning or capable of being functional after refurbishment and that the used CRTs will be reused or refurbished and reused. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(2) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, William Jefferson Clinton Building, Room 6144, 1200 Pennsylvania Ave. NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(b) CRT exporters of used, intact CRTs sent for reuse shall keep copies of normal business records, such as contracts, demonstrating that each shipment of exported used, intact CRTs will be reused. This documentation shall be retained for a period of at least three years from the date the CRTs were exported. If the documents are written in a language other than English, CRT exporters of used, intact CRTs sent for reuse shall provide both the original, non-English version of the normal business records as well as a third-party translation of the normal business records into English within 30 days upon request by EPA.

R315-261-140. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Applicability.

(a) The requirements of Sections R315-261-140 through 143 and R315-261-147 through 151 and Appendix I to R315-261 apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under Subsection R315-261-4(a)(24), except as provided otherwise in Subsection R315-261-140(b).

(b) States and the Federal government are exempt from the financial assurance requirements of Sections R315-261-140 through 143and R315-261-147 through 151.

R315-261-141. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Definitions of Terms as Used in Sections R315-261-140 Through 151.

The terms defined in 40 CFR 265.141(d), (f), (g), and (h), which are adopted by reference, have the same meaning in Sections R315-140 through 143 and R315-261-147 through 151 as they do in 40 CFR 265.141, which is adopted by reference.

R315-261-142. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Cost Estimate.

(a) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility.

(1) The estimate shall equal the cost of conducting the activities described in Subsection R315-261-142(a) at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

(2) The cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of parent corporation in 40 CFR 265.141(d), which is adopted by reference. The owner or operator may use costs for on-site disposal in accordance with applicable requirements if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR 265.113(d), which is adopted by reference; facility structures or equipment, land, or other assets associated with the facility.

(4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR 265.113(d), which is adopted by reference, that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section R315-261-143. For owners and operators using the financial test or corporate guarantee, the cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in Subsection R315-261-143(e)(3). The adjustment may be made by recalculating the cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in Subsections R315-261-142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the cost estimate by the inflation factor. The result is the adjusted cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in Subsection R315-261-142(a) or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in Subsection R315-261-142(a). The revised cost estimate shall be adjusted for inflation as specified in Subsection R315-261-142(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest cost estimate prepared in accordance with Subsections R315-261-142(a) and (c) and, when this estimate has been adjusted in accordance with Subsection R315-261-142(b), the latest adjusted cost estimate.

R315-261-143. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Financial Assurance Condition.

As provided in Subsection R315-261-4(a)(24)(vi)(F), an owner or operator of a reclamation or intermediate facility shall have financial assurance as a condition of the exclusion as required under Subsection R315-261-4(a)(24). He shall choose from the options as specified in Subsections R315-261-143(a) through (e).

(a) Trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by establishing a trust fund which conforms to the requirements of Subsection R315-261-143(a) and submitting an originally signed duplicate of the trust agreement to the Director. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in Subsection R315-261-151(a)(1), and the trust agreement shall be accompanied by a formal certification of acknowledgment, for example, see Subsection R315-261-151(a)(2). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current cost estimate covered by the agreement.

(3) The trust fund shall be funded for the full amount of the current cost estimate before it may be relied upon to satisfy the requirements of Section R315-261-143.

(4) Whenever the current cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current cost estimate, or obtain other financial assurance as specified in Section R315-261-143 to cover the difference.

(5) If the value of the trust fund is greater than the total amount of the current cost estimate, the owner or operator may submit a written request to the Director for release of the amount in excess of the current cost estimate.

(6) If an owner or operator substitutes other financial assurance as specified in Section R315-261-143 for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current cost estimate covered by the trust fund.

(7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsections R315-261-143(a)(5) or (6), the Director shall instruct the trustee to release to the owner or operator such funds as the Director specifies in writing. If the owner or operator begins final closure under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which is adopted by reference; an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Director shall instruct the trustee to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with 40 CFR 265.143(i), which is adopted by reference, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Director does not instruct the trustee to make such reimbursements, he shall provide to the owner or operator a detailed written statement of reasons.

(8) The Director shall agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(b) Surety bond guaranteeing payment into a trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining a surety bond which conforms to the requirements of Subsection R315-261-143(b) and submitting the bond to the Director. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of Section R315-261-143 shall also establish a standby trust fund. Under the terms of the bond,

all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-261-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of Section R315-261-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-261-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-261-151(a), to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before loss of the exclusion under Subsection R315-261-4(a)(24) or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin closure issued by the Director becomes final, or within 15 days after an order to begin closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in Section R315-261-143, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current cost estimate, except as provided in Subsection R315-261-143(f).

(7) Whenever the current cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the penal sum may be reduced to the amount of the current cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in Section R315-261-143.

(c) Letter of credit.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining an irrevocable standby letter of credit which conforms to the requirements of Subsection R315-261-143(c) and submitting the letter to the Director. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(c).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-261-143 shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements of the trust fund specified in Subsection R315-261-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-261-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-261-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-261-151(a), to show current cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number, if any issued; name; and address of the facility; and the amount of funds assured for the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least 1 year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current cost estimate, except as provided in Subsection R315-261-143(f).

(7) Whenever the current cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the amount of the credit may be reduced to the amount of the current cost estimate following written approval by the Director.

(8) Following a determination by the Director that the hazardous secondary materials do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the Director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in Section R315-261-143 and obtain written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Director shall draw on the letter of credit. The Director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as

specified in Section R315-261-143 and obtain written approval of such assurance from the Director.

(10) The Director shall return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(d) Insurance.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by obtaining insurance which conforms to the requirements of Subsection R315-261-143(d) and submitting a certificate of such insurance to the Director. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Utah. (2) The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(d).

(3) The insurance policy shall be issued for a face amount at least equal to the current cost estimate, except as provided in subsection R315-261-143(f). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The insurance policy shall guarantee that funds shall be available whenever needed to pay the cost of removal of all hazardous secondary materials from the unit, to pay the cost of decontamination of the unit, to pay the costs of the performance of activities required under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which is adopted by reference; as applicable, for the facilities covered by this policy. The policy shall also guarantee that once funds are needed, the insurer shall be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

(5) After beginning partial or final closure under Rules R315-264 or 265, as applicable, an owner or operator or any other authorized person may request reimbursements for closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Director shall instruct the insurer to make reimbursements in such amounts as the Director specifies in writing if the Director determines that the expenditures are in accordance with the approved plan or otherwise justified. If the Director has reason to believe that the maximum cost over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with Subsection R315-261-143(h), that the owner or operator is no longer required to maintain financial assurance for the particular facility. If the Director does not instruct the insurer to make such reimbursements, he shall provide to the owner or operator a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in Subsection R315-261-143(i)(10). Failure to pay the premium, without substitution of alternate financial assurance as specified in Section R315-261-143, shall constitute a significant violation of these regulations warranting such remedy as the Director deems necessary. Such violation shall be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(i) The Director deems the facility abandoned; or

(ii) Conditional exclusion or interim status is lost, terminated, or revoked; or

(iii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-261-143 to cover the increase. Whenever the current cost estimate decreases, the face amount may be reduced to the amount of the current cost estimate following written approval by the Director.

(10) The Director shall give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(e) Financial test and corporate guarantee.

(1) An owner or operator may satisfy the requirements of Section R315-261-143 by demonstrating that he passes a financial test as specified in Subsection R315-261-143(e). To pass this test the owner or operator shall meet the criteria of either Subsections R315-261-143(e)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current cost estimates" as used in Subsection R315-261-143(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, Subsection R315-261-151(e). The phrase "current plugging and abandonment cost estimates" as used in Subsection R315-261-143(e)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(e); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-143(e)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-143(e)(3)(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.

(4) The owner or operator may obtain an extension of the time allowed for submission of the documents specified in Subsection R315-261-143(e)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, if any are issued; name; address; and current cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of Sections R315-261-140 through 143 and R315-261-147 through 151;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he shall submit the documents specified in Subsection R315-261-143 (e)(3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year shall be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-143(e)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-143(e)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-143(e)(1), he shall send notice to the Director of intent to establish alternate financial assurance as specified in Section R315-261-143. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of Subsection R315-261-143(e)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in Subsection R315-261-143(e)(3). If the Director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of Subsection R315-261-143(e)(1), the owner or operator shall provide alternate financial assurance as specified in Section R315-261-143 within 30 days after notification of such a finding.

(8) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-143(e)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in Section R315-261-143 within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in Subsection R315-261-143(e)(3) when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-261-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-261-143 in accordance with Subsection R315-261-143(i).

(10) An owner or operator may meet the requirements of Section R315-261-143 by obtaining a written guarantee. The guarantor shall 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. The guarantor shall meet the requirements for owners or operators in Subsections R315-261-143(e)(1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(1). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-143(e)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or

operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(i) Following a determination by the Director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the guarantor shall dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with closure requirements found in Rules R315-264 or 265, as applicable, or establish a trust fund as specified in Subsection R315-261-143(a) in the name of the owner or operator in the amount of the current cost estimate.

(ii) The corporate guarantee shall 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, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in Section R315-261-143 and obtain the written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(f) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of Section R315-261-143 by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms shall be as specified in Subsection R315-261-143(a) through (d), except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for the facility.

(g) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in Section R315-261-143 to meet the requirements of Section R315-261-143 for more than one facility. Evidence of financial assurance submitted to the Director shall include a list showing, for each facility, the EPA Identification Number, if any issued; name; address; and the amount of funds assured by the mechanism. In directing funds available through the mechanism for any of the facilities covered by the mechanism, the Director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(h) Removal and Decontamination Plan for Release

(1) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under Subsection R315-261-4(a)(24)(vi)(F) shall submit a plan for removing all hazardous secondary material residues to the Director at least 180 days prior to the date on which he expects to cease to operate under the exclusion.

(2) The plan shall include, at least:

(A) For each hazardous secondary materials storage unit subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), a description of how all excluded hazardous secondary materials shall be recycled or sent for recycling, and how all residues, contaminated containment systems, liners, etc; contaminated soils; subsoils; structures; and equipment shall be removed or decontaminated as necessary to protect human health and the environment, and

(B) A detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment; and

(C) A detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control, etc; and

(D) A schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under Subsection R315-261-4(a)(24)(vi)(F) and the time required for intervening activities which will allow tracking of the progress of decontamination.

(3) The Director shall provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He shall also, in response to a request or at his discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Director shall 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. The Director shall approve, modify, or disapprove the plan within 90 days of its receipt. If the Director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator shall modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Director shall approve or modify this plan in writing within 60 days. If the Director modifies the plan, this modified plan becomes the approved plan. The Director shall assure that the approved plan is consistent with Subsection R315-261-143(h). A copy of the modified plan with a detailed statement of reasons for the modifications shall be mailed to the owner or operator.

(4) Within 60 days of completion of the activities described for each hazardous secondary materials management unit, the owner or operator shall submit to the Director, by registered mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification shall be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification shall be furnished to the Director, upon request, until he releases the owner or operator from the financial assurance requirements for Subsection R315-261-4(a)(24)(vi)(F).

(i) Release of the owner or operator from the requirements of Section R315-261-143. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan as required in Subsection R315-261-143(h), the Director shall notify the owner or

operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain financial assurance for that facility or a unit at the facility, unless the Director has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the unit or that the unit has not been decontaminated in accordance with the approved plan.

R315-261-147. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in Subsections R315-261-147(a)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147(a).

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by a Director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Subsection R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(a)(1) through (a)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-261-147(a)(1) through (a)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(a)(1) through (a)(6).

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in Section R315-260-10, which are used to manage hazardous secondary materials excluded under Subsection R315-261-4(a)(24) or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who shall meet the requirements of Section R315-261-147 may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in Subsections R315-261-147(b)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147.

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Section R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-261-147(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(b)(1) through (b)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under Subsection R315-261-147(b)(1) through (b)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(b)(1) through (b)(6).

(c) Request for alternative. If an owner or operator can demonstrate to the satisfaction of the Director that the levels of financial responsibility required by Subsection R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain an alternative financial liability requirement from the Director. The request for an alternative financial liability requirement shall be submitted in writing to the Director. If granted, the alternative financial liability requirement shall take the form of an adjusted level of required liability coverage, such level to be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Director may require an owner or operator who requests an alternative financial liability requirement to provide such technical and engineering information as is deemed necessary by the Director to determine a level of financial responsibility other than that required by Subsection R315-261-147(a) or (b).

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by Subsections R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Director may adjust the level of financial responsibility required under Subsections R315-261-147(a) or (b) as may be necessary to protect human health and the environment. This adjusted level shall be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection R315-261-147(b). An owner or operator shall furnish to the Director, within a reasonable time, any information which the Director requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per Subsection R315-261-143(h), the Director shall notify the owner or operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Director has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of Subsections R315-261-147(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least $10 million; and

(C) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in Subsection R315-261-147(f)(1) refers to the annual aggregate amounts for which coverage is required under Subsections R315-261-147(a) and (b) and the annual aggregate amounts for which coverage is required under Subsections R315-264-

147(a) and (b) and 40 CFR 265.147(a) and(b), which are adopted by reference,.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by Subsection R315-261-143(e), and liability coverage, he shall submit the letter specified in Subsection R315-261-151(f) to cover both forms of financial responsibility; a separate letter as specified in Subsection R315-261-151(e) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-147(f)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-147(f)(3)(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in Subsection R315-261-147(f)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-261-147(f)(3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-147(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-147(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-147(f)(1), he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in Section R315-261-147. Evidence of liability coverage shall be submitted to the Director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-147(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in Section R315-261-147 within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to Subsection R315-261-147(g)(2), an owner or operator may meet the requirements of Section R315-261-147 by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall 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. The guarantor shall meet the requirements for owners or operators in Subsection R315-261-147(f)(1) through (f)(6). The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(2). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-147(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(2)(i) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of Section R315-261-147 only if the non-U.S. corporation has identified a registered agent for service of process in Utah.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining an irrevocable standby letter of credit that conforms to the requirements of Subsection R315-261-147(h) and submits a copy of the letter of credit to the Director.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or Utah agency.

(3) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(j).

(4) An owner or operator who uses a letter of credit to

satisfy the requirements of Section R315-261-147 may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(5) The wording of the standby trust fund shall be identical to the wording specified in Subsection R315-261-151(m).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining a surety bond that conforms to the requirements of Subsection R315-261-147(i) and submitting a copy of the bond to the Director.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(k).

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by establishing a trust fund that conforms to the requirements of Subsection R315-261-147(j) and submitting an originally signed duplicate of the trust agreement to the Director.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of Section R315-261-147. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in Section R315-261-147 to cover the difference. For purposes of Subsection R315-261-147(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by Section R315-261-147, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund shall be identical to the wording specified in Subsection R315-261-151(l).

R315-261-148. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator shall notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Subsection R315-261-143(e) shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee.

(b) An owner or operator who fulfills the requirements of Sections R315-261-143 or R315-261-147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

R315-261-151. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Wording of the Instruments.

(a)(1) A trust agreement for a trust fund, as specified in Subsection R315-261-143(a) shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of ___----" or "a national bank"), the "Trustee."

Whereas, the Utah Waste Management and Radiation Control Board of the State of Utah, (the "BOARD") has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under Rules R315-264, or 265, or satisfying the conditions of the exclusion under Subsection R315-261-4(a)(24) shall provide assurance that funds shall be available if needed for care of the facility under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which are adopted by reference; as applicable,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "BOARD", "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(d) The term "DIRECTOR" means the Director, Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the EPA Identification Number, if available; name; address; and the current cost estimates, or portions thereof; for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Director in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The

Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by Director.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of the performance of activities required under Sections R315-264-110 through 120 or 40 CFR 265.110 through 121, which are adopted by reference, for the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Director from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has

appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Diector, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Direcotr, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of (insert name of State).

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-261-151(a)(1) as such regulations were constituted on the date first above written.

(Signature of Grantor)
(Title)
Attest:
(Title)
(Seal)
(Signature of Trustee)
Attest:
(Title)
(Seal)

(2) The following is an example of the certification of acknowledgment which shall accompany the trust agreement for a trust fund as specified in Subsection R315-261-143(a). State of Utah requirements may differ on the proper content of this acknowledgment.

State of County of On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(b) A surety bond guaranteeing payment into a trust fund, as specified in Subsection R315-261-143(b), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Financial Guarantee Bond
Date bond executed:
Effective date:
Principal: (legal name and business address of owner or operator)
Type of Organization: (insert "individual," "joint venture," "partnership," or "corporation")
State of incorporation:
Surety(ies): (name(s) and business address(es))
EPA and State Identification Numbers, name, address and amount(s) for each facility guaranteed by this bond:
Total penal sum of bond: $
Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Director of the Division of Waste management and Radiation Control of the State of Utah (hereinafter called the Director) in the event that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Utah Solid and Hazardous Waste Act as amended, to have a permit or

interim status in order to own or operate each facility identified above, or to meet conditions under Subsection R315-261-4(a)(24), and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under Subsection R315-261-4(a)(24) and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous secondary materials from coverage as solid waste under Subsection R315-261-4(a)(24),

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the Director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Sections R315-261-140 through 143 and R315-261-147 through 151, as applicable, and obtain the Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-261-151(b) as such regulations were constituted on the date this bond was executed.

Principal
(Signature(s))
(Name(s))
(Title(s))
(Corporate seal)Corporate Surety(ies)
(Name and address)
State of incorporation:Liability limit:
$(Signature(s))
(Name(s) and title(s))
(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $

(c) A letter of credit, as specified in Subsection R315-261-143(c), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit
(Director name), Director,
Division of Waste Management and Radiation Control
195 North 1950 West
P.O Box 144880
Salt Lake City, Utah 84114-4880

Dear Director: We hereby establish our Irrevocable Standby Letter of Credit No.____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under Subsection R315-261-4(a)(24), at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars $____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No.__, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Utah Solid and Hazardous Waste Act as amended."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you, the Director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of (owner's or operator's name) in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-261-151(c) as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(d) A certificate of insurance, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certificate of Insurance

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: (List for each facility: The EPA and State Identification Numbers (if any issued), name, address, and the amount of insurance for all facilities covered, which shall total the face amount shown below.)

Face Amount:

Policy Number:

Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of Subsection R315-261-143(d) as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director of the Division of Waste Management and Radiation Control, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Subsection R315-261-151(d) such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:(Date)

(e) A letter from the chief financial officer, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Letter From Chief Financial Officer

Director

Division of Waste Management and Radiation Control

195 North 1950 West

P.O. Box 144880

Salt Lake City, UT 84114-4880

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Sections R315-261-140 through 143 and R315-261-147 through 151.

(Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA and State Identification Numbers (if any issued), name, address, and current cost estimates.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

3. In all other states this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-261-140 through 143 and R315-261-147 through 151 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

7. This firm guarantees, through the guarantee specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference; the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ___; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

8. In other jurisdictions and states where the Director is not authorized to administer the financial requirements of R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure

cost estimates covered by such a test are shown for each facility: __.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: __.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of Subsection R315-261-143(e)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-143(e)(1)(ii) are used.)

Alternative I

1. Sum of current cost estimates (total of all cost estimates shown in the nine paragraphs above) $__

*2. Total liabilities (if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4) $__

*3. Tangible net worth $____

*4. Net worth $____-

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital (line 5 minus line 6) $____

*8. The sum of net income plus depreciation, depletion, and amortization $____-

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____-

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____-

12. Is line 7 at least 6 times line 1? (Yes/No) ____-

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____

14. Is line 9 at least 6 times line 1? (Yes/No) ____-

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____-

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____-

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____-

Alternative II

1. Sum of current cost estimates (total of all cost estimates shown in the eight paragraphs above) $____-

2. Current bond rating of most recent issuance of this firm and name of rating service ____-

3. Date of issuance of bond ____-

4. Date of maturity of bond ____-

*5. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) $____-

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____-

7. Is line 5 at least $10 million? (Yes/No) ____

8. Is line 5 at least 6 times line 1? (Yes/No) ____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____

10. Is line 6 at least 6 times line 1? (Yes/No) ____-

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-261-151(e) as such regulations were constituted on the date shown immediately below.

(Signature) (Name) (Title) (Date)

(f) A letter from the chief financial officer, as specified in Subsection R315-261-147(f), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

Letter From Chief Financial Officer

Director

Division of Waste Management and Radiation Control

P.O. 144880

Salt Lake City, Utah 84114-4880

I am the chief financial officer of (firm's name and address). This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage under Section R315-261-147(insert "and costs assured Subsection R315-261-143(e)" if applicable) as specified in Sections R315-261-140 through 143 and R315-261-147 through 151.

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address).

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151:____

The firm identified above guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities owned or operated by the following: ____-. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee -____; or (3) engaged in the following substantial business relationship with the owner or operator ____-, and receiving the following value in consideration of this guarantee ____-). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference,:____

The firm identified above guarantees, through the guarantee specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference; liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities owned or operated by the following: __. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee __; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this

guarantee __). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

(If you are using the financial test to demonstrate coverage of both liability and costs assured under Subsection R315-261-143(e) or closure or post-closure care costs under Sections R315-264-143; R315-264-145; 40 CFR 265.143 or 145, which are adopted by reference; fill in the following nine paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA and State identification number (if any issued), name, address, and current cost estimates.)

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by the test are shown for each facility:____.

2. This firm guarantees, through the guarantee specified in Sections R315-261-140 through 143 and R315-261-147 through 151, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility:____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

3. In all other states this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-261-140 through 143 and R315-261-147 through 151. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-261-140 through 143 and R315-261-147 through 151 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

7. This firm guarantees, through the guarantee specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference; the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____).

(Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

8. In other jurisdictions, and states where the Director is not authorized to administer the financial requirements of R315-264.264-140 through 151 or 40 CFR 265.140 through 150, which are adopted by reference, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-264-140 through 151 and 40 CFR 265.140 through 150, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

Part A. Liability Coverage for Accidental Occurrences

(Fill in Alternative I if the criteria of Subsection R315-261-147(f)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-147(f)(1)(ii) are used.)

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____-.

*2. Current assets $____-.

*3. Current liabilities $____-.

4. Net working capital (line 2 minus line 3) $____-.

*5. Tangible net worth $____-.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____-.

7. Is line 5 at least $10 million? (Yes/No) ____-.

8. Is line 4 at least 6 times line 1? (Yes/No) ____-.

9. Is line 5 at least 6 times line 1? (Yes/No) ____-.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____-.

2. Current bond rating of most recent issuance and name of rating service ____-____-.

3. Date of issuance of bond _____---.

4. Date of maturity of bond _____---.

*5. Tangible net worth $____-.

*6. Total assets in U.S. (required only if less than 90%

of assets are located in the U.S.) $____-.

7. Is line 5 at least $10 million? (Yes/No) ____-.

8. Is line 5 at least 6 times line 1? ____-.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) __.

10. Is line 6 at least 6 times line 1? ____-.

(Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under Subsection R315-261-143(e) or closure or post-closure care costs under Sections R315-264-143; R315-264-145; 40 CFR 265.143 or 145, which is adopted by reference.)

Part B. Facility Care and Liability Coverage

(Fill in Alternative I if the criteria of Subsection R315-261-143(e)(1)(i) and Subsection R315-261-147(f)(1)(i) are used. Fill in Alternative II if the criteria of Subsection R315-261-143(e)(1)(ii) and Subsection R315-261-147(f)(1)(ii) are used.)

Alternative I

1. Sum of current cost estimates (total of all cost estimates listed above) $____-

2. Amount of annual aggregate liability coverage to be demonstrated $____-

3. Sum of lines 1 and 2 $____

*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____-

*5. Tangible net worth $____

*6. Net worth $____-

*7. Current assets $____

*8. Current liabilities $____

9. Net working capital (line 7 minus line 8) $____

*10. The sum of net income plus depreciation, depletion, and amortization $____-

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current cost estimates (total of all cost estimates listed above) $____-

2. Amount of annual aggregate liability coverage to be demonstrated $____-

3. Sum of lines 1 and 2 $____

4. Current bond rating of most recent issuance and name of rating service _____-

5. Date of issuance of bond _____---

6. Date of maturity of bond _____---

*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____-

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____-

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-261-151(f) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(g)(1) A corporate guarantee, as specified in Subsection R315-261-143(e), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Facility Care

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in Subsections R315-264-141(h) and 40 CFR 265.141(h), which is adopted by reference," to the Director of the Utah Division of Waste Management and Radiation Control (the Director).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection R315-261-143(e).

2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: EPA and State Identification Number (if any issued), name, and address.

3. "Closure plans" as used below refer to the plans maintained as required by Sections R315-261-140 through 143 and R315-261-147 through 151 for the care of facilities as identified above.

4. For value received from (owner or operator), guarantor guarantees that in the event of a determination by the Director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under Subsection R315-261-4(a)(24), the guarantor shall dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in Sections R315-264-110 through 120 or 40 CFR 265-110 through 121 which are adopted by reference, as applicable, or establish a trust fund as specified in Subsection R315-261-143(a) in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Sections R315-261-140 through 143 and R315-261-147 though 151, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in of Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted

by reference, or Sections R315-261-140 through 143 and R315-261-147 though 151, as applicable, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to Rules R315-264, 265, or Sections R315-261-140 through 143 and R315-261-147 though 151.

9. Guarantor agrees to remain bound under this guarantee for as long as (owner or operator) shall comply with the applicable financial assurance requirements of Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or the financial assurance condition of Subsection R315-261-4(a)(24)(vi)(F) for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

Guarantor may terminate this guarantee by sending notice by certified mail to the Director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate coverage complying with Section R315-261-143.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator)

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 though 151, as applicable, and obtain written approval of such assurance from the Director within 90 days after a notice of cancellation by the guarantor is received by theDirector from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Director or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of Sections R315-264-140 through 151 or 40 CFR 265-140 through 150 that are adopted by reference, or Sections R315-261-140 through 143 and R315-261-147 though 151.

I hereby certify that the wording of this guarantee is identical to the wording specified in Subsection R315-261-151(g)(1) as such regulations were constituted on the date first above written.

Effective date: (Name of guarantor) (Authorized signature for guarantor) (Name of person signing) (Title of person signing) Signature of witness or notary:

(2) A guarantee, as specified in Subsection R315-261-147(g), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Guarantee for Liability Coverage

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States insert "the State of ____-" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of (owner or operator) of (business address), which is one of the following: "our subsidiary;" "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in (either Subsection R315-264-141(h) or 40 CFR 265.141(h), which is adopted by reference)", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection R315-261-147(g).

2. (Owner or operator) owns or operates the following facility(ies) covered by this guarantee: (List for each facility: EPA and state identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.) This corporate guarantee satisfies RCRA third-party liability requirements for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.

3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by (sudden and/or nonsudden) accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor shall satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert owner or operator) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator); or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert owner or operator). This exclusion applies:

(A) Whether (insert owner or operator) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury

to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert owner or operator);

(2) Premises that are sold, given away or abandoned by (insert owner or operator) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert owner or operator);

(4) Personal property in the care, custody or control of (insert owner or operator);

(5) That particular part of real property on which (insert owner or operator) or any contractors or subcontractors working directly or indirectly on behalf of (insert owner or operator) are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) that he intends to provide alternate liability coverage as specified in Section R315-261-147, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in Section R315-261-147 in the name of (owner or operator), unless (owner or operator) has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by Section R315-261-147, provided that such modification shall become effective only if the Director does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable requirements of Section R315-261-147 for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

9. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

10. Guarantor may terminate this guarantee by sending notice by certified mail to the Director and to (owner or operator), provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate liability coverage complying with Section R315-261-147.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator):

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Principal) and (insert name and address of third-party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Principal's) facility should be paid in the amount of $.

(Signatures) Principal (Notary) Date (Signatures) Claimant(s) (Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee shall be considered (insert "primary" or "excess") coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in Subsection R315-261-151(g)(2) as such regulations were constituted on the date shown immediately below.

Effective date:

(Name of guarantor) (Authorized signature for guarantor)

(Name of person signing) (Title of person signing) Signature of witness or notary:

(h) A hazardous waste facility liability endorsement as required by Section R315-261-147 shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

H a z a r d o u s S e c o n d a r y M a t e r i a l Reclamation/Intermediate Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under Section R35-261-147. The coverage applies at (list EPA and state Identification Number (if any issued), name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of

reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subsection R315-261-147(f).

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control (the Director), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(e) Any other termination of this endorsement shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director.

Attached to and forming part of policy No. __ issued by (name of Insurer), herein called the Insurer, of (address of Insurer) to (name of insured) of (address) this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in Subsection R315-261-151(h) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(i) A certificate of liability insurance as required in Section R315-261-147 shall be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Hazardous Secondary Material Reclamation/Intermediate Facility Certificate of Liability Insurance

1. (Name of Insurer), (the "Insurer"), of (address of Insurer) hereby certifies that it has issued liability insurance covering bodily injury and property damage to (name of insured), (the "insured"), of (address of insured) in connection with the insured's obligation to demonstrate financial responsibility under Rules R315-264 and 265, and the financial assurance condition of Subsection R315-261-4(a)(24)(vi)(F). The coverage applies at (list EPA and state Identification Number (if any issued), name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs. The coverage is provided under policy number, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Section R315-261-147.

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control (the Director), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director.

(e) Any other termination of the insurance shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director.

I hereby certify that the wording of this instrument is identical to the wording specified in Subsection R315-261-151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of authorized representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(j) A letter of credit, as specified in Subsection R315-261-147(h) of this chapter, shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit

(Name and Address of Issuing Institution)

(Director name), Director,

Division of Waste Management and Radiation Control

195 North 1950 West

P.O Box 144880

Salt Lake City, Utah 84114-4880

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. ____----- in the favor of ("any and all third-party liability claimants" or insert name of trustee of the standby trust fund), at the request and for the account of (owner or operator's name and address) for third-party liability awards or settlements up to (in words) U.S. dollars $____----- per occurrence and the annual aggregate amount of (in words) U.S. dollars $_---, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of (in words) U.S. dollars $____----- per occurrence, and the annual aggregate amount of (in words) U.S. dollars $____-----, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. ____-----, and (insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties (insert principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operations of (principal's) facility should be paid in the amount of $( ). We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the

contract or agreement.

(b) Any obligation of (insert principal) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal).

This exclusion applies:

(A) Whether (insert principal) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert principal);

(2) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert principal);

(4) Personal property in the care, custody or control of (insert principal);

(5) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of these operations.

(Signatures)

Grantor

(Signatures)

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.)

This letter of credit is effective as of (date) and shall expire on (date at least one year later), but such expiration date shall be automatically extended for a period of (at least one year) on (date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Director, and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

(Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered (insert "primary" or "excess" coverage)."

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-261-151(j) as such regulations were constituted on the date shown immediately below.

(Signature(s)

and title(s) of official(s) of issuing institution)

(Date).

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(k) A surety bond, as specified in Subsection R315-261-147(i), shall be worded as follows: except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Payment Bond

Surety Bond No. (Insert number)

Parties (Insert name and address of owner or operator), Principal, incorporated in (Insert State of incorporation) of (Insert city and State of principal place of business) and (Insert name and address of surety company(ies)), Surety Company(ies), of (Insert surety(ies) place of business).

(EPA and State Identification Number (if any issued), name, and address for each facility guaranteed by this bond:)

___

TABLE

	Nonsudden accidental occurrences	Sudden accidental occurrences
Penal Sum Per Occurrence	(insert amount)	(insert amount)
Annual Aggregate	(insert amount)	(insert amount)

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules adopted by the Utah Waste Management and Radiation Control Board, particularly Rules R315-264; 265, that is adopted by reference; and Sections R315-261-140 through 143 and R315-261-147 through 151 (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert Principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Principal) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Principal) under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of (insert Principal) arising from, and in the course of, employment by (insert principal); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Principal). This exclusion applies:

(A) Whether (insert Principal) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the

ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Principal);

(2) Premises that are sold, given away or abandoned by (insert Principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Principal);

(4) Personal property in the care, custody or control of (insert Principal);

(5) That particular part of real property on which (insert Principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert Principal) are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert name of Principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Principal's) facility should be paid in the amount of $( ).

(Signature)

Principal

(Notary) Date

(Signature(s))

Claimant(s)

(Notary) Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond shall be considered (insert "primary" or "excess") coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Director forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Director, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Director.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from (insert date) (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-261-151(k), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s))

(Name(s))

(Title(s))

(Corporate Seal)

CORPORATE SURETY(IES)

(Name and address)

State of incorporation: Liability Limit: $(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $

(l)(1) A trust agreement, as specified in Subsection R315-261-147(j), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator) a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert, "incorporated in the State of ____" or "a national bank"), the "trustee."

____Whereas, the Waste Management and Radiation Control Board of the State of Utah, "the Board", has established certain regulations applicable to the Grantor, requiring that an owner or operator shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "BOARD", "Utah Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(b) The term "Director" means the Director, of the Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

(c) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term "Trustee" means the Trustee who enters

into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA and State Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____-(up to $1 million) per occurrence and (up to $2 million) annual aggregate for sudden accidental occurrences and ____ (up to $3 million) per occurrence and ____-(up to $6 million) annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from, and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Grantor). This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by Director.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Grantor's) facility or group of facilities should be paid in the amount of $( ).

(Signatures)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The

Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Direcotr, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Utah.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-261-151(l) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a trust fund as specified in Subsection R315-261-147(j). State requirements may differ on the proper

State of

County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

(Signature of Notary Public)

(m)(1) A standby trust agreement, as specified in Subsection R315-261-147(h), shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator) a (name of a State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert, "incorporated in the State of _____" or "a national bank"), the "trustee."

Whereas the Utah Waste Management and Radiation Control Board (Board), has established certain regulations applicable to the Grantor, requiring that an owner or operator shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Board", "Utah Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(b) The term "Director" means the Director,of the Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

(c) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA and State Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____-(up to $1 million) per occurrence and ____-(up to $2 million) annual aggregate for sudden accidental occurrences and ____-(up to $3 million) per occurrence and ____-(up to $6 million) annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from, and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Grantor).

This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert

Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned by (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Director.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Grantor's) facility should be paid in the amount of $( )

(Signature)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of Subsection R315-261-151(k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the

Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Utah.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-261-151(m) as such regulations were constituted on the date first above written.

(Signature of Grantor)
(Title)
Attest:
(Title)
(Seal)
(Signature of Trustee)
Attest:
(Title)
(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a standby trust fund as specified in Subsection R315-261-147(h).

State of
County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

(Signature of Notary Public)

R315-261-170. Use and Management of Containers - Applicability.

Sections R315-261-170 through 179 apply to hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27) and stored in containers.

R315-261-171. Use and Management of Containers - Condition of Containers.

If a container holding hazardous secondary material is not in good condition, e.g., severe rusting, apparent structural defects, or if it begins to leak, the hazardous secondary material shall be transferred from this container to a container that is in good condition or managed in some other way that complies with the requirements of Rule R315-261.

R315-261-172. Use and Management of Containers - Compatibility Of Hazardous Secondary Materials With Containers.

The container shall be made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous secondary material to be stored, so that the ability of the container to contain the material is not impaired.

R315-261-173. Use and Management of Containers - Management of Containers.

(a) A container holding hazardous secondary material shall always be closed during storage, except when it is necessary to add or remove the hazardous secondary material.

(b) A container holding hazardous secondary material shall not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

R315-261-175. Use and Management of Containers - Containment.

(a) Container storage areas shall have a containment system that is designed and operated in accordance with Subsection R315-261-175(b).

(b) A containment system shall be designed and operated as follows:

(1) A base shall underlie 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.

(4) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in Subsection R315-261-175(b)(3) to contain any run-on which might enter the system; and

(5) Spilled or leaked material 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.

R315-261-176. Use and Management of Containers - Special Requirements for Ignitable or Reactive Hazardous Secondary Material.

Containers holding ignitable or reactive hazardous secondary material shall be located at least 15 meters (50 feet) from the facility's property line.

R315-261-177. Use and Management of Containers - Special Requirements for Incompatible Materials.

(a) Incompatible materials shall not be placed in the same container.

(b) Hazardous secondary material shall not be placed in an unwashed container that previously held an incompatible material.

(c) A storage container holding a hazardous secondary material that is incompatible with any other materials stored nearby shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

R315-261-179. Use and Management of Containers - Air Emission Standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a container in accordance with the applicable requirements of Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089.

R315-261-190. Tank Systems - Applicability.

(a) The requirements of Sections R315-261-190 through 200 apply to tank systems for storing or treating hazardous secondary material excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27).

(b) Tank systems, including sumps, as defined in Section R315-260-10, that serve as part of a secondary containment system to collect or contain releases of hazardous secondary materials are exempted from the requirements in Subsection R315-261-193(a).

R315-261-191. Tank Systems - Assessment of Existing Tank System's Integrity.

(a) Tank systems shall meet the secondary containment requirements of Section R315-261-193, or the remanufacturer or other person that handles the hazardous secondary material shall determine that the tank system is not leaking or is unfit for use. Except as provided in Subsection R315-261-191(c), a written assessment reviewed and certified by a qualified Professional Engineer shall be kept on file at the remanufacturer's facility or other facility that stores or treats the hazardous secondary material that attests to the tank system's integrity.

(b) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the material(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the material(s) that have been and will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available, otherwise, an estimate of the age; and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment shall include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment shall include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer that addresses cracks, leaks, corrosion, and erosion.

Note to Subsection R315-261-191(b)(5)(ii): The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.

(c) If, as a result of the assessment conducted in accordance with Subsection R315-261-191(a), a tank system is found to be leaking or unfit for use, the remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of Section R315-261-196.

R315-261-193. Tank Systems - Containment and Detection of Releases.

(a) Secondary containment systems shall be:

(1) Designed, installed, and operated to prevent any migration of materials or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

Note to Subsection R315-261-193(a): If the collected material is a hazardous waste under Rule R315-261, it is subject to management as a hazardous waste in accordance with all applicable requirements of Rules R315-262 through 265, 266, and 268. If the collected material is discharged

through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

(b) To meet the requirements of Subsection R315-261-193(a), secondary containment systems shall be at a minimum:

(1) Constructed of or lined with materials that are compatible with the materials(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients, including static head and external hydrological forces, physical contact with the material to which it is exposed, climatic conditions, and the stress of daily operation, (including stresses from nearby vehicular traffic;

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous secondary material or accumulated liquid in the secondary containment system at the earliest practicable time; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked material and accumulated precipitation shall be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Secondary containment for tanks shall include one or more of the following devices:

(1) A liner, external to the tank;

(2) A vault; or

(3) A double-walled tank.

(d) In addition to the requirements of Subsections R315-261-193(a), (b), and (c), secondary containment systems shall satisfy the following requirements:

(1) External liner systems shall be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the material if the material is released from the tank(s), i.e., capable of preventing lateral as well as vertical migration of the material.

(2) Vault systems shall be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints, if any;

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored material and that will prevent migration of material into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the material being stored or treated is ignitable or reactive; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks shall be:

(i) Designed as an integral structure, i.e., an inner tank completely enveloped within an outer shell, so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time.

Note to Subsection R315-261-193(d)(3): The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(e) Reserved

(f) Ancillary equipment shall be provided with secondary containment, e.g., trench, jacketing, double-walled piping, that meets the requirements of Subsections R315-261-193(a) and (b) except for:

(1) Aboveground piping, exclusive of flanges, joints, valves, and other connections, that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices, e.g., excess flow check valves, flow metering shutdown devices, loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

R315-261-194. Tank Systems - General Operating Requirements.

(a) Hazardous secondary materials or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls, e.g., check valves, dry disconnect couplings;

(2) Overfill prevention controls, e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank; and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements of Section R315-261-196 if a leak or spill occurs in the tank system.

R315-261-196. Tank Systems - Response To Leaks or Spills and Disposition of Leaking or Unfit-For-Use Tank Systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the remanufacturer or other person that stores or treats the hazardous secondary material shall satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of materials. The remanufacturer or other person that stores or treats the hazardous secondary material shall immediately stop the flow of hazardous secondary material into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of material from tank system or secondary containment system.

(1) If the release was from the tank system, the remanufacturer or other person that stores or treats the hazardous secondary material shall, within 24 hours after detection of the leak or, if the remanufacturer or other person that stores or treats the hazardous secondary material demonstrates that it is not possible, at the earliest practicable time, remove as much of the material as is necessary to prevent further release of hazardous secondary material to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials shall be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The remanufacturer or other person that stores or treats the hazardous secondary material shall immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(1) Any release to the environment, except as provided in Subsection R315-261-196(d)(2), shall be reported to the Director within 24 hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report will satisfy this requirement.

(2) A leak or spill of hazardous secondary material is exempted from the requirements of Subsection R315-261-196(d) if it is:

(i) Less than or equal to a quantity of 1 pound, and

(ii) Immediately contained and cleaned up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information shall be submitted to the Director:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil, soil composition, geology, hydrogeology, climate;

(iii) Results of any monitoring or sampling conducted in connection with the release, if available. If sampling or monitoring data relating to the release are not available within 30 days, these data shall be submitted to the Director as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

(1) Unless the remanufacturer or other person that stores or treats the hazardous secondary material satisfies the requirements of Subsections R315-261-196(e)(2) through (4), the tank system shall cease to operate under the remanufacturing exclusion at Subsection R315-261-4(a)(27).

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the remanufacturer or other person that stores or treats the hazardous secondary material may return the system to service as soon as the released material is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the remanufacturer or other person that stores or treats the hazardous secondary material shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section R315-261-193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of Subsection R315-261-196(f) are satisfied. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, e.g., the bottom of an inground or onground tank, the entire component shall be provided with secondary containment in accordance with Section R315-261-193 prior to being returned to use.

(f) Certification of major repairs. If the remanufacturer or other person that stores or treats the hazardous secondary material has repaired a tank system in accordance with Subsection R315-261-196(e), and the repair has been extensive, e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, the tank system shall not be returned to service unless the remanufacturer or other person that stores or treats the hazardous secondary material has obtained a certification by a qualified Professional Engineer that the repaired system is capable of handling hazardous secondary materials without release for the intended life of the system. This certification shall be kept on file at the facility and maintained until closure of the facility.

Note 1 to Section R315-261-196: The Director may, on the basis of any information received that there is or has been a release of hazardous secondary material or hazardous constituents into the environment, issue an order under RCRA section 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note 2 to Section R315-261-196: 40 CFR part 302 may require the owner or operator to notify the National Response Center of certain releases.

R315-261-197. Tank Systems - Termination of Remanufacturing Exclusion.

Hazardous secondary material stored in units more than 90 days after the unit ceases to operate under the remanufacturing exclusion at Subsection R315-261-4(a)(27) or otherwise ceases to be operated for manufacturing, or for storage of a product or a raw material, then becomes subject to regulation as hazardous waste under Rules R315-261 through 266, 268, 270, and 124, as applicable.

R315-261-198. Tank Systems - Special Requirements for Ignitable or Reactive Materials.

(a) Ignitable or reactive material shall not be placed in tank systems, unless the material is stored or treated in such a way that it is protected from any material or conditions that may cause the material to ignite or react.

(b) The remanufacturer or other person that stores or treats hazardous secondary material which is ignitable or reactive shall store or treat the hazardous secondary material in a tank that is in compliance with the requirements for the maintenance of protective distances between the material management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), incorporated by reference, see Section R315-260-11.

R315-261-199. Tank Systems - Special Requirements for Incompatible Materials.

(a) Incompatible materials shall not be placed in the same tank system.

(b) Hazardous secondary material shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible material.

R315-261-200. Tank Systems - Air Emission Standards.

The remanufacturer or other person that stores or treats the hazardous secondary material shall manage all hazardous secondary material placed in a tank in accordance with the applicable requirements of Sections R315-261-1030 through 1035, 1050 through 1064, and 1080 through 1089.

R315-261-400. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Applicability.

The requirements of Sections R315-261-400, 410, 411, and 420 apply to those areas of an entity managing hazardous secondary materials excluded under Subsection R315-261-4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d), that accumulates 6000 kg or less of hazardous secondary material at any time shall comply with Sections R315-261-410 and 411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) that accumulates more than 6000 kg of hazardous secondary material at any time shall comply with Sections R315-261-410 and 420.

R315-261-410. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Preparedness and Prevention.

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material shall be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(2) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel 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 such a device is not required under Subsection R315-261-410(b).

(2) If there is ever just one employee on the premises while the facility is operating, he shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-261-410(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill 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.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) 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:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous secondary material handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating

under a verified recycler exclusion under Subsection R315-260-31(d) shall document the refusal in the operating record.

R315-261-411. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Emergency Procedures for Facilities Generating or Accumulating 6000 Kg or Less of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) that generates or accumulates 6000 kg or less of hazardous secondary material shall comply with the following requirements:

(a) At all times there shall be at least one employee either on the 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 specified in Subsection R315-261-411(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and follow the requirements Section R316-263-33. The report shall include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident, e.g., spill or fire;

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

R315-261-420. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Contingency Planning and Emergency Procedures for Facilities Generating or Accumulating More Than 6000 Kg of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) that generates or accumulates more than 6000 kg of hazardous secondary material shall comply with the following requirements:

(a) Purpose and implementation of contingency plan.

(1) Each generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) that accumulates more than 6000 kg of hazardous secondary material 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 release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan.

(1) The contingency plan shall describe the actions facility personnel shall take to comply with Subsection R315-261-420(a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) accumulating more than 6000 kg of hazardous secondary material has already 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 that are sufficient to comply with the requirements of Rule R315-261. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler exclusion under Subsection R315-260-31(d) may develop one contingency plan which meets all regulatory requirements. The Director recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-hazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

(3) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subsection R315-262-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), 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 shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill 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.

(6) 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 releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) 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 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 hazardous secondary material handled, 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 Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, 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.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(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 of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note 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:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident, e.g., fire, explosion;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

R315-261-1030. Air Emission Standards for Process Vents - Applicability.

The regulations in Sections R315-261-1030 through

1035 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or stream stripping operations that manage hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27) with concentrations of at least 10 ppmw, unless the process vents are equipped with operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

R315-261-1031. Air Emission Standards for Process Vents - Definitions.

(a) As used in Sections R315-261-1030 through 1035, all terms not defined herein shall have the meaning given them in the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

(1) "Air stripping operation" is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

(2) "Bottoms receiver" means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(3) "Closed-vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(4) "Condenser" means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(5) "Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(6) "Continuous recorder" means a data-recording device recording an instantaneous data value at least once every 15 minutes.

(7) "Control device" means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale, e.g., a primary condenser on a solvent recovery unit, is not a control device.

(8) "Control device shutdown" means the cessation of operation of a control device for any purpose.

(9) "Distillate receiver" means a container or tank used to receive and collect liquid material, condensed, from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(10) "Distillation operation" means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(11) "Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

(12) "Equipment" means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by Sections R315-261-1030 through 1035.

(13) "Flame zone" means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(14) "Flow indicator" means a device that indicates whether gas flow is present in a vent stream.

(15) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(16) "Fractionation operation" means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(17) "Hazardous secondary material management unit shutdown" means a work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous secondary material management unit or part of a hazardous secondary material management unit for less than 24 hours is not a hazardous secondary material management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous secondary material management unit shutdowns.

(18) "Hot well" means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(19) "In gas/vapor service" means that the piece of equipment contains or contacts a hazardous secondary material stream that is in the gaseous state at operating conditions.

(20) "In heavy liquid service" means that the piece of equipment is not in gas/vapor service or in light liquid service.

(21) "In light liquid service" means that the piece of equipment contains or contacts a material stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 degrees C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 degrees C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

(22) "In situ sampling systems" means nonextractive samplers or in-line samplers.

(23) "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(24) "Malfunction" means any sudden failure of a control device or a hazardous secondary material management unit or failure of a hazardous secondary material management unit to operate in a normal or usual manner, so that organic emissions are increased.

(25) "Open-ended valve or line" means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous secondary material and one side open to the atmosphere, either directly or through open piping.

(26) "Pressure release" means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(27) "Process heater" means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(28) "Process vent" means any open-ended pipe or stack

that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank, e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well, associated with hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(29) "Repaired" means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(30) "Sampling connection system" means an assembly of equipment within a process or material management unit used during periods of representative operation to take samples of the process or material fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

(31) "Sensor" means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(32) "Separator tank" means a device used for separation of two immiscible liquids.

(33) "Solvent extraction operation" means an operation or method of separation in which a solid or solution is contacted with a liquid solvent, the two being mutually insoluble, to preferentially dissolve and transfer one or more components into the solvent.

(34) "Startup" means the setting in operation of a hazardous secondary material management unit or control device for any purpose.

(35) "Steam stripping operation" means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(36) "Surge control tank" means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(37) "Thin-film evaporation operation" means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(38) "Vapor incinerator" means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(39) "Vented" means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical" means such as compressors or vacuum-producing systems or by process-related" means such as evaporation produced by heating and not caused by tank loading and unloading, working losses, or by natural" means such as diurnal temperature changes.

R315-261-1032. Air Emission Standards for Process Vents - Process Vents.

(a) The remanufacturer or other person that stores or treats hazardous secondary materials in hazardous secondary material management units with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous secondary material with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the remanufacturer or other person that stores or treats the hazardous secondary material installs a closed-vent system and control device to comply with the provisions of Subsection R315-261-1032(a) the closed-vent system and control device shall meet the requirements of Section R315-261-1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Subsection R315-261-1034(c).

(d) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in Subsection R315-261-1034(c) shall be used to resolve the disagreement.

R315-261-1033. Air Emission Standards for Process Vents - Closed-Vent Systems and Control Devices.

(a)(1) The remanufacturer or other person that stores or treats the hazardous secondary materials in hazardous secondary material management units using closed-vent systems and control devices used to comply with provisions of Rule R315-261 shall comply with the provisions of Sections R315-261-1033.

(2) Reserved

(b) A control device involving vapor recovery, e.g., a condenser or adsorber, shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Subsection R315-261-1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device, e.g., a vapor incinerator, boiler, or process heater, shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 deg. C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in Subsection R315-261-1033(e)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in Subsection R315-261-1033(f)(2)(iii).

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in Subsection R315-261-1033(e)(2).

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3),

less than 18.3 m/s (60 ft/s), except as provided in Subsections R315-261-1033(d)(4)(ii) and (iii).

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-261-1033(e)(3), less than the velocity, V_{max}, as determined by the method specified in Subsection R315-261-1033(e)(4) and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in Subsection R315-261-1033(e)(5).

(6) A flare used to comply with Section R315-261-1033 shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of Sections R315-261-1030 through 1035. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation: The equation found in 40 CFR261.1033(e)(2) 2015 ed is adopted and incorporated by reference.

Where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 degrees C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 degrees C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 deg. C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82, incorporated by reference as specified in Section R315-260-11; and

H_i = Net heat of combustion of sample component i, kcal/9 mol at 25 degrees C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83, incorporated by reference as specified in Section R315-260-11, if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate, in units of standard temperature and pressure, as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed , free, cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with Subsection R315-261-1033(d)(4)(iii) shall be determined by the following equation:

$Log_{10}(V_{max}) = (H_T + 28.8)/31.7$

Where:

28.8 = Constant,

31.7 = Constant,

H_T = The net heating value as determined in Subsection R315-261-1033(e)(2).

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$V_{max} = 8.706 + 0.7084 (H_T)$

Where:

8.706 = Constant,

0.7084 = Constant,

H_T = The net heating value as determined in Subsection R315-261-1033(e)(2).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each control device required to comply with Section R315-261-1033 to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus/minus 1 percent of the temperature being monitored in degrees C or plus/minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of plus/minus 1 percent of the temperature being monitored in degrees Celsius (deg. C) or plus/minus 0.5 deg. C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit, i.e., product side.

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic

compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by Subsections R315-261-1033(f)(1) and (2) at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of Section R315-261-1033.

(g) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(h) A remanufacturer or other person that stores or treats hazardous secondary material in a hazardous secondary material management unit using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Subsection R315-261-1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Subsection R315-261-1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter shall ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) A remanufacturer or other person that stores or treats hazardous secondary material at an affected facility seeking to comply with the provisions of Rule R315-261 by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in Subsection R315-261-1034(b), and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor and inspect each closed-vent system required to comply with Section R315-261-1033 to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with Subsection R315-261-1033(k)(1) shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the remanufacturer or other person that stores or treats the hazardous secondary material on or before the date that the system becomes subject to Section R315-261-1033. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor the closed-vent system components and connections using the procedures specified in Subsection R315-261-1034(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in Subsection R315-261-1033(l)(1)(i), the remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed, e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange, shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The remanufacturer or other person that stores or treats the hazardous secondary material shall monitor a component or connection using the procedures specified in Subsection R315-261-1034(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced, e.g., a section of damaged hard piping is replaced with new hard piping, or the connection is unsealed, e.g., a flange is unbolted.

(B) Closed-vent system components or connections other than those specified in Subsection R315-261-1033(l)(1)(ii)(A) shall be monitored annually and at other times as requested by the Director, except as provided for in Subsection R315-261-1033(o), using the procedures specified in Subsection R315-261-1034(b) to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect or leak in accordance with the requirements of Subsection R315-261-1033(l)(3).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-261-1035.

(2) Each closed-vent system that is used to comply with Subsection R315-261-1033(k)(2) shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to Section R315-261-1033. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall

perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1033(l)(3).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Section R315-261-1035.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected, except as provided for in Subsection R315-261-1033(l)(3)(iii).

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the defect repair in accordance with the requirements specified in Section R315-261-1035.

(m) Closed-vent systems and control devices used to comply with provisions of Sections R315-261-1030 through 1035 shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-600 through 603; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Sections R315-261-1030 through 1035 and 1080 through 1089 or subparts AA and CC of 40 CFR 265 which is incorporated in R315-265; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under 40 CFR part 61 or 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-340 through 351; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR part 265, subpart O, which is incorporated by Rule R315-265.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-266-100 through 112; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Sections R315-266-100 through 112.

(o) Any components of a closed-vent system that are designated, as described in Subsection R315-261-1035(c)(9), as unsafe to monitor are exempt from the requirements of Subsection R315-261-1033(l)(1)(ii)(B) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-261-1033(l)(1)(ii)(B); and

(2) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management unit using a closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in Subsection R315-261-1033(l)(1)(ii)(B) as frequently as practicable during safe-to-monitor times.

R315-261-1034. Air Emission Standards for Process Vents - Test Methods and Procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1030 through 1035 shall comply with the test methods and procedural requirements provided in Section R315-261-1034.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in Subsection R315-261-1033(l), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with Subsection R315-261-1032(a) and with the total organic compound concentration limit of Subsection R315-261-1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the

organic HAP used as the calibration gas shall be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

The equation found in 40 CFR 261.1034(c)(1)(iv)(A), 2015 ed. is adopted and incorporated by reference

Where:

E_h= Total organic mass flow rate, kg/h;

Q_{2sd}= Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i= Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i= Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (at 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

E_h= (Q)(C)(MW)(0.0416)(10^{-6})

Where:

E_h= Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3 (at 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

E_A=(E_h)(H)

Where:

E_A=Total organic mass emission rate, kg/y;

E_h=Total organic mass flow rate for the process vent, kg/h;

H=Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates, E_h, as determined in Subsection R315-261-1034(c)(1)(iv), and by summing the annual total organic mass emission rates, E_A, as determined in Subsection R315-261-1034(c)(1)(v), for all affected process vents at the facility.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in Subsection R315-261-1034(c)(1).

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs shall be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the remanufacturer's or other person's that stores or treats the hazardous secondary material control, compliance may, upon the Director's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous secondary material distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of Sections R315-261-1030 through 1035, the remanufacturer or other person that stores or treats the hazardous secondary material shall make an initial determination that the time-weighted, annual average total organic concentration of the material managed by the hazardous secondary material management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the material using the following procedures:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material shall take a minimum of four grab samples of material for each material stream managed in the affected unit under process conditions expected to cause the maximum material organic concentration.

(ii) For material generated onsite, the grab samples shall be collected at a point before the material is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the material after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For material generated offsite, the grab samples shall be collected at the inlet to the first material management unit that receives the material provided the material has been transferred to the facility in a closed system such as a tank truck and the material is not diluted or mixed with other material.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each material stream managed in the unit in determining the time-weighted, annual average total organic concentration of the material. The time-weighted average is to be calculated using the annual quantity of each material stream processed and the mean organic concentration of each material stream managed in the unit.

(2) Using knowledge of the material to determine that its total organic concentration is less than 10 ppmw. Documentation of the material determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility

that has previously been demonstrated by direct measurement to generate a material stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous secondary materials with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of Sections R315-261-1030 through 1035 or by the date when the material is first managed in a hazardous secondary material management unit, whichever is later, and

(2) For continuously generated material, annually, or

(3) Whenever there is a change in the material being managed or a change in the process that generates or treats the material.

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous secondary material with organic concentrations of at least 10 ppmw based on knowledge of the material, the dispute may be resolved by using direct measurement as specified at Subsection R315-261-1034(d)(1).

R315-261-1035. Air Emission Standards for Process Vents - Recordkeeping Requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1030 through 1035 shall comply with the recordkeeping requirements of Section R315-261-1035.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material of more than one hazardous secondary material management unit subject to the provisions of Sections R315-261-1030 through 1035 may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the following records on-site:

(1) For facilities that comply with the provisions of Subsection R315-261-1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be kept on-site at the facility by the effective date that the facility becomes subject to the provisions of Sections R315-261-1030 through 1035.

(2) Up-to-date documentation of compliance with the process vent standards in Subsection R315-261-1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, i.e., the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, e.g., identify the hazardous secondary material management units on a facility plot plan.

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values, e.g., temperatures, flow rates, or vent stream organic compounds and concentrations, that represent the conditions that result in maximum organic emissions, such as when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action, e.g., managing a material of different composition or increasing operating hours of affected hazardous secondary material management units, that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan shall be developed and include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous secondary material management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with Subsection R315-261-1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by Subsection R315-261-1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions," incorporated by reference as specified in R315-260-11, or other engineering texts acceptable to the Director that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsections R315-261-1035(b)(4)(iii)(A) through (G) may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent

concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Subsection R315-261-1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous secondary material management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Subsection R315-261-1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Subsection R315-261-1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Rule R315-261 shall be recorded and kept up-to-date at the facility. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Subsections R315-261-1033 (f)(1) and (2).

(3) Monitoring, operating, and inspection information required by Subsections R315-261-1033(f) through (k).

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 deg. C, period when the combustion temperature is below 760 deg. C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28 degrees C below the design average combustion zone temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(A).

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 degrees C below the average temperature of the inlet vent stream established as a requirement of Subsection R315-261-1035(b)(4)(iii)(B), or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of Subsection R315-261-1035(b)(4)(iii)(B).

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 degrees C below the design average flame zone temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(C), or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of Subsection R315-261-1035(b)(4)(iii)(C).

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with Subsection R315-261-1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E).

(vii) For a condenser that complies with Subsection R315-261-1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 degrees C above the design average exhaust vent stream temperature established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E); or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 degrees C above the design average coolant fluid temperature at the condenser outlet established as a requirement of Subsection R315-261-1035(b)(4)(iii)(E).

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Subsection R315-261-1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent

stream organic compound concentration level established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly on-site in the control device and complies with Subsection R315-261-1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of Subsection R315-261-1035(b)(4)(iii)(F).

(5) Explanation for each period recorded under Subsection R315-261-1035(c)(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in Subsections R315-261-1033(g) or (h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in Subsection R315-261-1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) A remanufacturer or other person that stores or treats the hazardous secondary material designating any components of a closed-vent system as unsafe to monitor pursuant to Subsection R315-261-1033(o) shall record in a log that is kept at the facility the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Subsection R315-261-1033(o), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in Subsection R315-261-1033(l), the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The remanufacturer or other person that stores or treats the hazardous secondary material may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there shall be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by Subsections R315-261-1035(c)(3) through (10) shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Subsection R315-261-1032 including supporting documentation as required by Subsection R315-261-1034(d)(2) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used, shall be recorded in a log that is kept at the facility.

R315-261-1050. Air Emission Standards for Equipment Leaks - Applicability.

(a) The regulations in Sections R315-261-1050 through 1064 apply to equipment that contains hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27), unless the equipment operations are subject to the requirements of an applicable Clean Air Act regulation codified under 40 CFR part 60, part 61, or part 63.

R315-261-1051. Air Emission Standards for Equipment Leaks - Definitions.

As used in Sections R315-261-1050 through 1064, all terms shall have the meaning given them in Section R315-261-1031, the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

R315-261-1052. Air Emission Standards: Pumps in Light Liquid Service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in Section R315-261-1063(b), except as provided in Subsections R315-261-1052(d), (e), and (f).

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair, e.g., tightening the packing gland, shall be made no later than five calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of Subsection R315-261-1052(a), provided the following requirements are met:

(1) Each dual mechanical seal system shall be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section R315-261-1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system shall not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump shall be checked by visual inspection,

each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in Subsection R315-261-1052(d)(3) shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in Subsection R315-261-1052(d)(5)(ii), a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(iii) A first attempt at repair, e.g., relapping the seal, shall be made no later than five calendar days after each leak is detected.

(e) Any pump that is designated, as described in Section R315-261-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsections R315-261-1052(a), (c), and (d) if the pump meets the following requirements:

(1) Shall have no externally actuated shaft penetrating the pump housing.

(2) Shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Section R315-261-1063(c).

(3) Shall be tested for compliance with Subsection R315-261-1052(e)(2) initially upon designation, annually, and at other times as requested by the Director.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section R315-261-1060, it is exempt from the requirements of Subsections R315-261-1052(a) through (e).

R315-261-1053. Air Emission Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in Subsections R315-261-1053(h) and (i).

(b) Each compressor seal system as required in Subsection R315-261-1053(a) shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section R315-261-1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous secondary material stream with no detectable emissions to atmosphere.

(c) The barrier fluid shall not be a hazardous secondary material with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in Subsections R315-261-1053(a) through (c) shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in Subsection R315-261-1053(d) shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor shall be checked daily.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under Subsection R315-261-1053(e)(2), a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair, e.g., tightening the packing gland, shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of Subsections R315-261-1053(a) and (b) if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section R315-261-1060, except as provided in Subsection R315-261-1053(i).

(i) Any compressor that is designated, as described in Section R315-261-1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of Subsections R315-261-1053(a) through (h) if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Section R315-261-1063(c).

(2) Is tested for compliance with Subsection R315-261-1053(i)(1) initially upon designation, annually, and at other times as requested by the Director.

R315-261-1054. Air Emission Standards: Pressure Relief Devices in Gas/Vapor Service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-261-1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in Section R315-261-1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-261-1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section R315-261-1060 is exempt from the requirements of Subsection R315-261-1054(a) and (b).

R315-261-1055. Air Emission Standards: Sampling Connection Systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent

system as required in Subsection R315-261-1055(a) shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a material management unit that complies with the applicable requirements of Sections R315-261-1084 through1086 or a control device that complies with the requirements of Section R315-261-1060.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of Subsections R315-261-1055(a) and (b).

R315-261-1056. Air Emission Standards: Open-Ended Valves or Lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous secondary material stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous secondary material stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with Subsection R315-261-1056(a) at all other times.

R315-261-1057. Air Emission Standards: Valves in Gas/Vapor Service or in Light Liquid Service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Subsection R315-261-1063(b) and shall comply with Subsections R315-261-1057(b) through (e), except as provided in Subsections R315-261-1057(f), (g), and (h) and Sections R315-261-1061 and 1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months,

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section R315-261-1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in Subsection R315-261-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsection R315-261-1057(a) if the valve:

(1) Has no external actuating mechanism in contact with the hazardous secondary material stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in Subsection R315-261-1063(c).

(3) Is tested for compliance with Subsection R315-261-1057(f)(2) initially upon designation, annually, and at other times as requested by the Director.

(g) Any valve that is designated, as described in Subsection R315-261-1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of Subsection R315-261-1057(a) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-261-1057(a).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in Subsection R315-261-1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of Subsection R315-261-1057(a) if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous secondary material management unit within which the valve is located was in operation before the effective date of Rule R315-261.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

R315-261-1058. Air Emission Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within five days by the method specified in subsection R315-261-1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-261-1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under Subsection R315-261-1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined, e.g., porcelain, glass, or glass-lined, is exempt from the monitoring requirements of Subsection R315-261-1058(a) and from the recordkeeping requirements of Section R315-261-1064.

R315-261-1059. Air Emission Standards: Delay of Repair.

(a) Delay of repair of equipment for which leaks have been detected shall be allowed if the repair is technically infeasible without a hazardous secondary material management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous secondary material management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected shall be allowed for equipment that is isolated

from the hazardous secondary material management unit and that does not continue to contain or contact hazardous secondary material with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves shall be allowed if:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section R315-261-1060.

(d) Delay of repair for pumps shall be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous secondary material management unit shutdown shall be allowed for a valve if valve assembly replacement is necessary during the hazardous secondary material management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous secondary material management unit shutdown will not be allowed unless the next hazardous secondary material management unit shutdown occurs sooner than 6 months after the first hazardous secondary material management unit shutdown.

R315-261-1060. Air Emission Standards: Closed-Vent Systems and Control Devices.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material in a hazardous secondary material management units using closed-vent systems and control devices subject to Sections R315-261-1050 through 1064 shall comply with the provisions of Section R315-261-1033.

(b)(1) The remanufacturer or other person that stores or treats the hazardous secondary material at an existing facility who cannot install a closed-vent system and control device to comply with the provisions of Sections R315-261-1050 through 1064 on the effective date that the facility becomes subject to the provisions of Sections R315-261-1050 through 1064 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device shall be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to Sections R315-261-1050 through 1064 for installation and startup.

(2) Any unit that begins operation after the effective date of rule R315-261 and is subject to the provisions of Sections R315-261-1050 through 1064 when operation begins, shall comply with the rules immediately, i.e., shall have control devices installed and operating on startup of the affected unit; the 30-month implementation schedule does not apply.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material at any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to Sections R315-261-1050 through 1064 shall comply with all requirements of Sections R315-261-1050 through 1064 as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by Sections R315-261-1050 through 1064 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of Sections R315-261-1050 through 1064. The remanufacturer or other person that stores or treats the hazardous secondary material shall keep a copy of the implementation schedule at the facility.

(4) Remanufacturers or other persons that store or treat the hazardous secondary materials at facilities and units that become newly subject to the requirements of Sections R315-261-1050 through 1064 after the effective date of Rule R315-261, due to an action other than those described in Subsection R315-261-1060(b)(3) shall comply with all applicable requirements immediately, i.e., shall have control devices installed and operating on the date the facility or unit becomes subject to Sections R315-261-1050 through 1064; the 30-month implementation schedule does not apply.

R315-261-1061. Air Emission Standards for Equipment Leaks - Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of Section R315-261-1057 may elect to have all valves within a hazardous secondary material management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if a remanufacturer or other person that stores or treats the hazardous secondary material decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) A performance test as specified in Subsection R315-261-1061(c) shall be conducted initially upon designation, annually, and at other times requested by the Director.

(2) If a valve leak is detected, it shall be repaired in accordance with Subsections R315-261-1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in Section R315-261-1057 within the hazardous secondary material management unit shall be monitored within 1 week by the methods specified in Subsection R315-261-1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in Section R315-261-1057 for which leaks are detected by the total number of valves subject to the requirements in Section R315-261-1057 within the hazardous secondary material management unit.

R315-261-1062. Air Emission Standards for Equipment Leaks - Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair.

(a) A remanufacturer or other person that stores or treats the hazardous secondary material subject to the requirements of Section R315-261-1057 may elect for all valves within a hazardous secondary material management unit to comply with one of the alternative work practices specified in Subsections R315-261-1062(b)(2) and (3).

(b)(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall comply with the requirements for valves, as described in Section R315-261-

1057, except as described in Subsections R315-261-1062(b)(2) and (3).

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip one of the quarterly leak detection periods, i.e., monitor for leaks once every six months, for the valves subject to the requirements in Section R315-261-1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than two percent, a remanufacturer or other person that stores or treats the hazardous secondary material may begin to skip three of the quarterly leak detection periods, i.e., monitor for leaks once every year, for the valves subject to the requirements in Section R315-261-1057.

(4) If the percentage of valves leaking is greater than two percent, the remanufacturer or other person that stores or treats the hazardous secondary material shall monitor monthly in compliance with the requirements in Section R315-261-1057, but may again elect to use Section R315-261-1062 after meeting the requirements of Subsection R315-261-1057(c)(1).

R315-261-1063. Air Emission Standards for Equipment Leaks - Test Methods and Procedures.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1050 through 1064 shall comply with the test methods and procedures requirements provided in Section R315-261-1063.

(b) Leak detection monitoring, as required in Sections R315-261-1052 through1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in Subsections R315-261-1052(e), 1053(i), and 1057(f) and Sections R315-261-1054, the test shall comply with the following requirements:

(1) The requirements of Subsections R315-261-1063(b)(1) through (4) shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous secondary material with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85, incorporated by reference under Section R315-260-11;

(2) Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

(3) Application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced. Documentation of a material determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the material is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same material stream where it can also be documented that no process changes have occurred since that analysis that could affect the material total organic concentration.

(e) If a remanufacturer or other person that stores or treats the hazardous secondary material determines that a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in Subsection R315-261-1063(d)(1) or (2).

(f) When a remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on whether a piece of equipment contains or contacts a hazardous secondary material with organic concentrations at least 10 percent by weight, the procedures in Subsection R315-261-1063(d)(1) or (2) can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous secondary material that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86, incorporated by reference under Section R315-260-11.

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of Subsections R315-261-1034(c)(1) through (4).

R315-261-1064. Air Emission Standards for Equipment Leaks - Recordkeeping Requirements.

(a)(1) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to the provisions of Sections R315-261-1050 through 1064 shall comply with the recordkeeping requirements of Section R315-261-1064.

(2) A remanufacturer or other person that stores or treats the hazardous secondary material in more than one hazardous secondary material management unit subject to the provisions of Sections R315-261-1050 through 1064 may comply with the recordkeeping requirements for these hazardous secondary material management units in one recordkeeping system if the system identifies each record by each hazardous secondary material management unit.

(b) Remanufacturer's and other person's that store or treat the hazardous secondary material shall record and keep the following information at the facility:

(1) For each piece of equipment to which Sections R315-261-1050 through 1064 applies:

(i) Equipment identification number and hazardous secondary material management unit identification.

(ii) Approximate locations within the facility, e.g., identify the hazardous secondary material management unit on a facility plot plan.

(iii) Type of equipment, e.g., a pump or pipeline valve.

(iv) Percent-by-weight total organics in the hazardous secondary material stream at the equipment.

(v) Hazardous secondary material state at the equipment, e.g., gas/vapor or liquid.

(vi) Method of compliance with the standard, e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals".

(2) For facilities that comply with the provisions of Subsection R315-261-1033(a)(2), an implementation schedule as specified in Subsection R315-261-1033(a)(2).

(3) Where a remanufacturer or other person that stores or treats the hazardous secondary material chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-261-1035(b)(3).

(4) Documentation of compliance with Section R315-261-1060, including the detailed design documentation or performance test results specified in Subsection R315-261-1035(b)(4).

(c) When each leak is detected as specified in Sections R315-261-1052, 1053, 1057, and 1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Subsection R315-261-1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for two successive months as specified in Subsection R315-261-1057(c) and no leak has been detected during those two months.

(d) When each leak is detected as specified in Sections R315-261-1052, 1053, 1057, and 1058, the following information shall be recorded in an inspection log and shall be kept at the facility:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with Subsection R315-261-1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in Subsection R315-261-1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with Subsection R315-261-1059(c).

(8) The signature of the remanufacturer or other person that stores or treats the hazardous secondary material, or designate, whose decision it was that repair could not be effected without a hazardous secondary material management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section R315-261-1060 shall be recorded and kept up-to-date at the facility as specified in Subsection R315-261-1035(c). Design documentation is specified in Subsections R315-261-1035(c)(1) and (2) and monitoring, operating, and inspection information in Subsections R315-261-1035(c)(3) through (8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in Sections R315-261-1052 through 1060 shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for equipment, except welded fittings, subject to the requirements of Sections R315-261-1050 through 1064.

(2)(i) A list of identification numbers for equipment that the remanufacturer or other person that stores or treats the hazardous secondary material elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Subsections R315-261-1052(e), 1053(i), and 1057(f).

(ii) The designation of this equipment as subject to the requirements of Subsection R315-261-1052(e), 1053(i), or 1057(f) shall be signed by the remanufacturer or other person that stores or treats the hazardous secondary material.

(3) A list of equipment identification numbers for pressure relief devices required to comply with Subsection R315-261-1054(a).

(4)(i) The dates of each compliance test required in Subsections R315-261-1052(e), 1053(i), and 1057(f) and Section R315-261-1054.

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Identification, either by list or location, area or group, of equipment that contains or contacts hazardous secondary material with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of Subsections R315-261-1057(g) and (h) shall be recorded in a log that is kept at the facility:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in a log that is kept at the facility for valves complying with Section R315-261-1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept at in the facility:

(1) Criteria required in Subsections R315-261-1052(d)(5)(ii) and 1053(e)(2) and an explanation of the

design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept at the facility for use in determining exemptions as provided in the applicability section of Sections R315-261-1050 and other Sections of Rule R315-261:

(1) An analysis determining the design capacity of the hazardous secondary material management unit.

(2) A statement listing the hazardous secondary material influent to and effluent from each hazardous secondary material management unit subject to the requirements in Sections R315-261-1052 through 1060 and an analysis determining whether these hazardous secondary materials are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Sections R315-261-1052 through 1060. The record shall include supporting documentation as required by Subsection R315-261-1063(d)(3) when application of the knowledge of the nature of the hazardous secondary material stream or the process by which it was produced is used. If the remanufacturer or other person that stores or treats the hazardous secondary material takes any action, e.g., changing the process that produced the material, that could result in an increase in the total organic content of the material contained in or contacted by equipment determined not to be subject to the requirements in Sections R315-261-1052 through 1060, then a new determination is required.

(l) Records of the equipment leak information required by Subsection R315-261-1064(d) and the operating information required by Subsection R315-261-1064(e) need be kept only three years.

(m) The remanufacturer or other person that stores or treats the hazardous secondary material at a facility with equipment that is subject to Sections R315-261-1050 through 1064 and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with Sections R315-261-1050 through 1064 either by documentation pursuant to Section R315-261-1064, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available at the facility.

R315-261-1080. Air Emission Standards for Tanks and Containers - Applicability.

(a) The regulations in Sections R315-261-1080 through 1089 apply to tanks and containers that contain hazardous secondary materials excluded under the remanufacturing exclusion at Subsection R315-261-4(a)(27), unless the tanks and containers are equipped with and operating air emission controls in accordance with the requirements of an applicable Clean Air Act regulations codified under 40 CFR part 60, part 61, or part 63.

R315-261-1081. Air Emission Standards for Tanks and Containers - Definitions.

(a) As used in Sections R315-261-1080 through 1089, all terms not defined herein shall have the meaning given to them in the Resource Conservation and Recovery Act, the Utah Solid and Hazardous Waste Act, and Rules R315-260 through 266.

(1) "Average volatile organic concentration or average VO concentration" means the mass-weighted average volatile organic concentration of a hazardous secondary material as determined in accordance with the requirements of Section R315-261-1084.

(2) "Closure device" means a cap, hatch, lid, plug, seal, valve, or other type of fitting that blocks an opening in a cover such that when the device is secured in the closed position it prevents or reduces air pollutant emissions to the atmosphere. Closure devices include devices that are detachable from the cover; e.g., a sampling port cap; manually operated, e.g., a hinged access lid or hatch; or automatically operated, e.g., a spring-loaded pressure relief valve.

(3) "Continuous seal" means a seal that forms a continuous closure that completely covers the space between the edge of the floating roof and the wall of a tank. A continuous seal may be a vapor-mounted seal, liquid-mounted seal, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

(4) "Cover" means a device that provides a continuous barrier over the hazardous secondary material managed in a unit to prevent or reduce air pollutant emissions to the atmosphere. A cover may have openings, such as access hatches, sampling ports, gauge wells, that are necessary for operation, inspection, maintenance, and repair of the unit on which the cover is used. A cover may be a separate piece of equipment which can be detached and removed from the unit or a cover may be formed by structural features permanently integrated into the design of the unit.

(5) "Empty hazardous secondary material container" means:

(a) A container from which all hazardous secondary materials 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 no more than 2.5 centimeters, one inch, of residue remain on the bottom of the container or inner liner;

(b) A container that is less than or equal to 119 gallons in size and no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner; or

(c) A container that is greater than 119 gallons in size and no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner.

(6) "Enclosure" means a structure that surrounds a tank or container, captures organic vapors emitted from the tank or container, and vents the captured vapors through a closed-vent system to a control device.

(7) "External floating roof" means a pontoon-type or double-deck type cover that rests on the surface of the material managed in a tank with no fixed roof.

(8) "Fixed roof" means a cover that is mounted on a unit in a stationary position and does not move with fluctuations in the level of the material managed in the unit.

(9) "Floating membrane cover" means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous secondary material being managed in a surface impoundment.

(10) "Floating roof" means a cover consisting of a double deck, pontoon single deck, or internal floating cover which rests upon and is supported by the material being contained, and is equipped with a continuous seal.

(11) "Hard-piping" means pipe or tubing that is manufactured and properly installed in accordance with relevant standards and good engineering practices.

(12) "In light material service" means the container is used to manage a material for which both of the following conditions apply: The vapor pressure of one or more of the organic constituents in the material is greater than 0.3 kilopascals (kPa) at 20 degrees C; and the total concentration of the pure organic constituents having a vapor pressure

greater than 0.3 kPa at 20 degrees C is equal to or greater than 20 percent by weight.

(13) "Internal floating roof" means a cover that rests or floats on the material surface, but not necessarily in complete contact with it, inside a tank that has a fixed roof.

(14) "Liquid-mounted seal" means a foam or liquid-filled primary seal mounted in contact with the hazardous secondary material between the tank wall and the floating roof continuously around the circumference of the tank.

(15) "Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(16) "Material determination" means performing all applicable procedures in accordance with the requirements of Section R315-261-1084 to determine whether a hazardous secondary material meets standards specified in Sections R315-261-1080 through 1089. Examples of a material determination include performing the procedures in accordance with the requirements of Section R315-261-1084 to determine the average VO concentration of a hazardous secondary material at the point of material origination; the average VO concentration of a hazardous secondary material at the point of material treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous secondary material; the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous secondary material and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous secondary material in a tank and comparing the results to the applicable standards.

(17) "Maximum organic vapor pressure" means the sum of the individual organic constituent partial pressures exerted by the material contained in a tank, at the maximum vapor pressure-causing conditions, i.e., temperature, agitation, pH effects of combining materials, etc., reasonably expected to occur in the tank. For the purpose of Sections R315-261-1080 through 1089, maximum organic vapor pressure is determined using the procedures specified in Subsection R315-261-1084(c).

(18) "Metallic shoe seal" means a continuous seal that is constructed of metal sheets which are held vertically against the wall of the tank by springs, weighted levers, or other mechanisms and is connected to the floating roof by braces or other means. A flexible coated fabric, envelope, spans the annular space between the metal sheet and the floating roof.

(19) "No detectable organic emissions" means no escape of organics to the atmosphere as determined using the procedure specified in Subsection R315-261-1084(d).

(20) "Point of material origination" means as follows:

(a) When the remanufacturer or other person that stores or treats the hazardous secondary material is the generator of the hazardous secondary material, the point of material origination means the point where a material produced by a system, process, or material management unit is determined to be a hazardous secondary material excluded under Subsection R315-261-4(a)(27).

Note to paragraph (a) of the definition of "Point of material origination: "In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63.

(b) When the remanufacturer or other person that stores or treats the hazardous secondary material is not the generator of the hazardous secondary material, point of material origination means the point where the remanufacturer or other person that stores or treats the hazardous secondary material accepts delivery or takes possession of the hazardous secondary material.

(21) "Safety device" means a closure device such as a pressure relief valve, frangible disc, fusible plug, or any other type of device which functions exclusively to prevent physical damage or permanent deformation to a unit or its air emission control equipment by venting gases or vapors directly to the atmosphere during unsafe conditions resulting from an unplanned, accidental, or emergency event. For the purpose of Sections R315-261-1080 through 1089, a safety device is not used for routine venting of gases or vapors from the vapor headspace underneath a cover such as during filling of the unit or to adjust the pressure in this vapor headspace in response to normal daily diurnal ambient temperature fluctuations. A safety device is designed to remain in a closed position during normal operations and open only when the internal pressure, or another relevant parameter, exceeds the device threshold setting applicable to the air emission control equipment as determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials.

(22) "Single-seal system" means a floating roof having one continuous seal. This seal may be vapor-mounted, liquid-mounted, or a metallic shoe seal.

(23) "Vapor-mounted seal" means a continuous seal that is mounted such that there is a vapor space between the hazardous secondary material in the unit and the bottom of the seal.

(24) "Volatile organic concentration" or "VO concentration" means the fraction by weight of the volatile organic compounds contained in a hazardous secondary material expressed in terms of parts per million (ppmw) as determined by direct measurement or by knowledge of the material in accordance with the requirements of Section R315-261-1084. For the purpose of determining the VO concentration of a hazardous secondary material, organic compounds with a Henry's law constant value of at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in the liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3, at 25 deg. Celsius shall be included.

R315-261-1082. Air Emission Standards for Tanks and Containers - Standards: General.

(a) Section R315-261-1082 applies to the management of hazardous secondary material in tanks and containers subject to Sections R315-261-1080 through 1089.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each hazardous secondary material management unit in accordance with standards specified in Sections R315-261-1084 through 1087, as applicable to the hazardous secondary material management unit, except as provided for in Subsection R315-261-1082(c).

(c) A tank or container is exempt from standards specified in Sections R315-261-1084 through 1087, as applicable, provided that the hazardous secondary material management unit is a tank or container for which all hazardous secondary material entering the unit has an average VO concentration at the point of material origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in Subsection R315-261-1083(a). The remanufacturer or other person that stores or treats the hazardous secondary material shall review and update, as

necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous secondary material streams entering the unit.

R315-261-1083. Air Emission Standards for Tanks and Containers - Material Determination Procedures.

(a) Material determination procedure to determine average volatile organic (VO) concentration of a hazardous secondary material at the point of material origination.

(1) Determining average VO concentration at the point of material origination. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of Subsection R315-261-1082(c)(1) from using air emission controls in accordance with standards specified in Sections R315-261-1084 through 1087, as applicable to the hazardous secondary material management unit.

(i) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of Subsection R315-261-1082(c)(1) from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

(ii) Perform a new material determination whenever changes to the source generating the material stream are reasonably likely to cause the average VO concentration of the hazardous secondary material to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section R315-261-1082.

(2) Determination of average VO concentration using direct measurement or knowledge. For a material determination that is required by Subsection R315-261-1083(a)(1), the average VO concentration of a hazardous secondary material at the point of material origination shall be determined using either direct measurement as specified in Subsection R315-261-1083(a)(3) or by knowledge as specified in Subsection R315-261-1083(a)(4).

(3) Direct measurement to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Identification. The remanufacturer or other person that stores or treats the hazardous secondary material shall identify and record in a log that is kept at the facility the point of material origination for the hazardous secondary material.

(ii) Sampling. Samples of the hazardous secondary material stream shall be collected at the point of material origination in a manner such that volatilization of organics contained in the material and in the subsequent sample is minimized and an adequately representative sample is collected and maintained for analysis by the selected method.

(A) The averaging period to be used for determining the average VO concentration for the hazardous secondary material stream on a mass-weighted average basis shall be designated and recorded. The averaging period can represent any time interval that the remanufacturer or other person that stores or treats the hazardous secondary material determines is appropriate for the hazardous secondary material stream but shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous secondary material determination. All of the samples for a given material determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a material determination for the material stream. One or more material determinations may be required to represent the complete range of material compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous secondary material stream. Examples of such normal variations are seasonal variations in material quantity or fluctuations in ambient temperature.

(C) All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material stream are collected such that a minimum loss of organics occurs throughout the sample collection and handling process, and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures for a total volatile organic constituent concentration may be found in Method 25D in 40 CFR part 60, appendix A.

(D) Sufficient information, as specified in the "site sampling plan" required under Subsection R315-261-1083(a)(3)(ii)(C), shall be prepared and recorded to document the material quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous secondary material represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with Method 25D in 40 CFR part 60, appendix A for the total concentration of volatile organic constituents, or using one or more methods when the individual organic compound concentrations are identified and summed and the summed material concentration accounts for and reflects all organic compounds in the material with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3, at 25 deg. Celsius. At the discretion of the remanufacturer or other person that stores or treats the hazardous secondary material, the test data obtained may be adjusted by any appropriate method to discount any contribution to the total volatile organic concentration that is a result of including a compound with a Henry's law constant value of less than 0.1 Y/X at 25 deg. Celsius. To adjust these data, the measured concentration of each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the remanufacturer or other person that stores or treats the hazardous secondary material elects to adjust the test data, the adjustment shall be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the material. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. Other test methods may be used if they meet the requirements in Subsection R315-261-1083(a)(3)(iii)(A) or (B) and provided the requirement to reflect all organic compounds in the material with Henry's law constant values greater than or equal to 0.1 Y/X, which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3, at 25 deg. Celsius, is met.

(A) Any EPA standard method that has been validated in accordance with "Alternative Validation Procedure for EPA Waste and Wastewater Methods," 40 CFR part 63, appendix D.

(B) Any other analysis method that has been validated in accordance with the procedures specified in Section 5.1 or Section 5.3, and the corresponding calculations in Section 6.1 or Section 6.3, of Method 301 in 40 CFR part 63, appendix A. The data are acceptable if they meet the criteria specified in Section 6.1.5 or Section 6.3.3 of Method 301. If correction is required under section 6.3.3 of Method 301, the data are acceptable if the correction factor is within the range 0.7 to 1.30. Other sections of Method 301 are not required.

(iv) Calculations.

(A) The average VO concentration (C) on a mass-weighted basis shall be calculated by using the results for all material determinations conducted in accordance with Subsections R315-261-1083(a)(3)(ii) and (iii) and the following equation:

The equation found in 40 CFR 261.1083(a)(3)(iv)(A), 2015 ed. is adopted and incorporated by reference.

Where:

C = Average VO concentration of the hazardous secondary material at the point of material origination on a mass-weighted basis, ppmw.

i = Individual material determination "i" of the hazardous secondary material.

n = Total number of material determinations of the hazardous secondary material conducted for the averaging period (not to exceed 1 year).

Q_i = Mass quantity of hazardous secondary material stream represented by C_i, kg/hr.

Q_T = Total mass quantity of hazardous secondary material during the averaging period, kg/hr.

C_i = Measured VO concentration of material determination "i" as determined in accordance with the requirements of Subsection R315-261-1083(a)(3)(iii), i.e., the average of the four or more samples specified in Subsection R315-261-1083(a)(3)(ii)(B), ppmw.

(B) For the purpose of determining C_i, for individual material samples analyzed in accordance with Subsection R315-261-1083(a)(3)(iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(I) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A.

(II) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the material that has a Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6}atmospheres/gram-mole/m^3, at 25 degrees Celsius.

(4) Use of knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material to determine average VO concentration of a hazardous secondary material at the point of material origination.

(i) Documentation shall be prepared that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material of the hazardous secondary material stream's average VO concentration. Examples of information that may be used as the basis for knowledge include: Material balances for the source or process generating the hazardous secondary material stream; constituent-specific chemical test data for the hazardous secondary material stream from previous testing that are still applicable to the current material stream; previous test data for other locations managing the same type of material stream; or other knowledge based on information included in shipping papers or material certification notices.

(ii) If test data are used as the basis for knowledge, then the remanufacturer or other person that stores or treats the hazardous secondary material shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, a remanufacturer or other person that stores or treats the hazardous secondary material may use organic concentration test data for the hazardous secondary material stream that are validated in accordance with Method 301 in 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) A remanufacturer or other person that stores or treats the hazardous secondary material using chemical constituent-specific concentration test data as the basis for knowledge of the hazardous secondary material may adjust the test data to the corresponding average VO concentration value which would have been obtained had the material samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration for each individual chemical constituent contained in the material is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}).

(iv) In the event that the Director and the remanufacture or other person that stores or treats the hazardous secondary material disagree on a determination of the average VO concentration for a hazardous secondary material stream using knowledge, then the results from a determination of average VO concentration using direct measurement as specified in Subsection R315-261-1083(a)(3) shall be used to establish compliance with the applicable requirements of Sections R315-261-1080 through 1089. The Director may perform or request that the remanufacturer or other person that stores or treats the hazardous secondary material perform this determination using direct measurement. The remanufacturer or other person that stores or treats the hazardous secondary material may choose one or more appropriate methods to analyze each collected sample in accordance with the requirements of Subsection R315-261-1083(a)(3)(iii).

(b) Reserved

(c) Procedure to determine the maximum organic vapor pressure of a hazardous secondary material in a tank.

(1) A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the maximum organic vapor pressure for each hazardous secondary material placed in a tank using Tank Level 1 controls in accordance with standards specified in Subsection R315-261-1084(c).

(2) A remanufacturer or other person that stores or treats the hazardous secondary material shall use either direct measurement as specified in Subsection R315-261-1083(c)(3) or knowledge of the waste as specified by Subsection R315-261-1083(c)(4) to determine the maximum organic vapor pressure which is representative of the hazardous secondary material composition stored or treated in the tank.

(3) Direct measurement to determine the maximum organic vapor pressure of a hazardous secondary material.

(i) Sampling. A sufficient number of samples shall be collected to be representative of the hazardous secondary material contained in the tank. All samples shall be collected and handled in accordance with written procedures prepared by the remanufacturer or other person that stores or treats the hazardous secondary material and documented in a site sampling plan. This plan shall describe the procedure by which representative samples of the hazardous secondary material are collected such that a minimum loss of organics occurs throughout the sample collection and handling process

and by which sample integrity is maintained. A copy of the written sampling plan shall be maintained at the facility. An example of acceptable sample collection and handling procedures may be found in Method 25D in 40 CFR part 60, appendix A.

(ii) Analysis. Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure of the hazardous secondary material:

(A) Method 25E in 40 CFR part 60 appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," incorporated by reference - refer to Section R315-260-11;

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92, incorporated by reference - refer to Section R315-260-11; and

(E) Any other method approved by the Director.

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in Subsection R315-261-1085(b)(1)(i) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

(d) Procedure for determining no detectable organic emissions for the purpose of complying with Sections R315-261-1080 through 1089:

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: The interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure relief valve.

(2) The test shall be performed when the unit contains a hazardous secondary material having an organic concentration representative of the range of concentrations for the hazardous secondary material expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the hazardous secondary material placed in the hazardous secondary management unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air, less than 10 ppmv hydrocarbon in air, and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppmv methane or n-hexane.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60, appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21 of 40 CFR part 60, appendix A. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure device prevents any sampling at the interface and the device is equipped with an enclosed extension or horn, e.g., some pressure relief devices, the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 ppmv except when monitoring a seal around a rotating shaft that passes through a cover opening, in which case the comparison shall be as specified in Subsection R315-261-1083(d)(9). If the difference is less than 500 ppmv, then the potential leak interface is determined to operate with no detectable organic emissions.

(9) For the seals around a rotating shaft that passes through a cover opening, the arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 10,000 ppmw. If the difference is less than 10,000 ppmw, then the potential leak interface is determined to operate with no detectable organic emissions.

R315-261-1084. Air Emission Standards for Tanks and Containers - Standards: Tanks.

(a) The provisions of Section R315-261-1084 apply to the control of air pollutant emissions from tanks for which Subsection R315-261-1082(b) references the use of Section R315-261-1084 for such air emission control.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each tank subject to Section R315-261-1084 in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous secondary material that meets all of the conditions specified in Subsections R315-261-1084(b)(1)(i) through (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in Subsection R315-261-1084(c) or the Tank Level 2 controls specified in Subsection R315-261-1084(d).

(i) The hazardous secondary material in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 m^3, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 m^3 but less than 151 m^3, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 m^3, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous secondary material in the tank is not heated by the remanufacturer or other person that stores or treats the hazardous secondary material to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous secondary material is

determined for the purpose of complying with Subsection R315-261-1084(b)(1)(i).

(2) For a tank that manages hazardous secondary material that does not meet all of the conditions specified in Subsections R315-261-1084(b)(1)(i) through (iii), the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of Subsection R315-261-1084(d). An example of tanks required to use Tank Level 2 controls is a tank for which the hazardous secondary material in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in Subsection R315-261-1084(b)(1)(i).

(c) Remanufacturers or other persons that store or treats the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in Subsection R315-261-1084(c)(1) through (4):

(1) The remanufacturer or other person that stores or treats that hazardous secondary material shall determine the maximum organic vapor pressure for a hazardous secondary material to be managed in the tank using Tank Level 1 controls before the first time the hazardous secondary material is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in Subsection R315-261-1083(c). Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform a new determination whenever changes to the hazardous secondary material managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in Subsection R315-261-1084(b)(1)(i), as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous secondary material in the tank. The fixed roof may be a separate cover installed on the tank, e.g., a removable cover mounted on an open-top tank, or may be an integral part of the tank structural design, e.g., a horizontal cylindrical tank equipped with a hatch.

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous secondary material is managed in the tank, except as provided for in Subsection R315-261-1084(c)(2)(iii)(B)(I) and (II).

(I) During periods when it is necessary to provide access to the tank for performing the activities of Subsection R315-261-1084(c)(2)(iii)(B)(II), venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(II) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: organic vapor permeability, the effects of any contact with the hazardous secondary material or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects

include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except under the special conditions provided for in Subsection R315-261-1084(l).

(iii) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(d) Remanufacturers or other persons that store or treat the hazardous secondary material controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in Subsection R315-261-1084(e);

(2) A tank equipped with an external floating roof in accordance with the requirements specified in Subsection R315-261-1084(f);

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in Subsection R315-261-1084(g);

(4) A pressure tank designed and operated in accordance with the requirements specified in Subsection R315-261-1084(h); or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in Subsection R315-261-1084(i).

(e) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in Subsections R315-261-1084(e)(1) through (3).

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-261-1081; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents, vacuum breaker vents, and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed, i.e., no visible gaps. Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the remanufacture or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous secondary material surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the internal floating roof components as follows except as provided in Subsection R315-261-1084(e)(3)(iii):

(A) Visually inspect the internal floating roof components through openings on the fixed-roof, e.g., manholes and roof hatches, at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal, if one is in service, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in Subsection R315-261-1084(e)(3)(ii) for an internal floating roof equipped with two continuous seals mounted one above the other, the remanufacturer or other person that stores or treats the hazardous secondary material may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every five years.

(iv) Prior to each inspection required by Subsection R315-261-1084(e)(3)(ii) or (iii), the remanufacturer or other person that stores or treats the hazardous secondary material

shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-261-1084(e)(3)(iv)(B).

(B) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least seven calendar days before refilling the tank.

(v) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(4) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-261-1084(e).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in Subsections R315-261-1084(f)(1) through (3).

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in Section R315-261-1081. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters. If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters.

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents, vacuum breaker vents, and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device shall be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well shall be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The remanufacturer or other person that stores or

treats the hazardous secondary material shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous secondary material for a period of 1 year or more, subsequent introduction of hazardous secondary material into the tank shall be considered an initial operation for the purposes of Subsections R315-261-1084(f)(3)(i)(A) and (B).

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(I) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(II) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter diameter uniform probe passes freely, without forcing or binding against the seal, between the seal and the wall of the tank and measure the circumferential distance of each such location.

(III) For a seal gap measured under Subsection R315-261-1084(f)(3), the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(IV) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in Subsection R315-261-1084(f)(1)(ii).

(E) In the event that the seal gap measurements do not conform to the specifications in Subsection R315-261-1084(f)(1)(ii), the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(F) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-261-1084(l).

(C) In the event that a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(D) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(iii) Prior to each inspection required by Subsection R315-261-1084(f)(3)(i) or (ii), the remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The remanufacturer or other person that stores or treats the hazardous secondary material shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under Subsection R315-261-1084(f)(3)(i), written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the remanufacturer or other person that stores or treats the hazardous secondary material so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-261-1084(f)(3)(iii)(C).

(C) When a visual inspection is not planned and the remanufacturer or other person that stores or treats the hazardous secondary material could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Director as soon as possible, but no later than seven calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least seven calendar days before refilling the tank.

(4) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-261-1084(f).

(g) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in Subsections R315-261-1084(g)(1) through (3).

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be

designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-261-1087.

(2) Whenever a hazardous secondary material is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in Section R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the remanufacturer or other person that stores or treats the hazardous secondary material to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in Section R315-261-1087.

(iii) The remanufacturer or other person that stores or treats the hazardous secondary material shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to Section R315-261-1084. Thereafter, the remanufacturer or other person that stores or treats the hazardous secondary material shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-261-1084(l).

(iv) In the event that a defect is detected, the remanufacture or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1084(k).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-261-1089(b).

(h) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in Subsection R315-261-1083(d).

(3) Whenever a hazardous secondary material is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in Subsection R315-261-1084(h)(3)(i) or (h)(3)(ii).

(i) At those times when opening of a safety device, as defined in Section R315-261-1081, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of Section R315-261-1087.

(i) The remanufacturer or other person that stores or treats the hazardous secondary material who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in Subsections R315-261-1084(i)(1) through (4).

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified

in Section R315-261-1087.

(3) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of Subsections R315-261-1084(i)(1) and (2).

(4) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor the closed-vent system and control device as specified in Section R315-261-1087.

(j) The remanufacturer or other person that stores or treats the hazardous secondary material shall transfer hazardous secondary material to a tank subject to Section R315-261-1084 in accordance with the following requirements:

(1) Transfer of hazardous secondary material, except as provided in Subsection R315-261-1084(j)(2), to the tank from another tank subject to Section R315-261-1084 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous secondary material to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of 40 CFR part 63, subpart RR - National Emission Standards for Individual Drain Systems.

(2) The requirements of Subsection R315-261-1084(j)(1) do not apply when transferring a hazardous secondary material to the tank under any of the following conditions:

(i) The hazardous secondary material meets the average VO concentration conditions specified in Subsection R315-261-1082(c)(1) at the point of material origination.

(ii) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in Subsection R315-261-1082(c)(2).

(iii) The hazardous secondary material meets the requirements of Subsection R315-261-1082(c)(4).

(k) The remanufacturer or other person that stores or treats the hazardous secondary material shall repair each defect detected during an inspection performed in accordance with the requirements of Subsection R315-261-1084(c)(4), (e)(3), (f)(3), or (g)(3) as follows:

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in Subsection R315-261-1084(k)(2).

(2) Repair of a defect may be delayed beyond 45 calendar days if the remanufacturer or other person that stores or treats the hazardous secondary material determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous secondary material normally managed in the tank. In this case, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect the next time the process or unit that is generating the hazardous secondary material managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of Sections R315-261-1080 through 1089, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the remanufacturer or other person that stores or treats the hazardous secondary material may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of Sections R315-261-1080 through 1089, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, a remanufacturer or other person that stores or treats the hazardous secondary material is required to inspect and monitor, as required by the applicable provisions of Section R315-261-1084, only those portions of the tank cover and those connections to the tank, e.g., fill ports, access hatches, gauge wells, etc., that are located on or above the ground surface.

R315-261-1086. Air Emission Standards for Tanks and Containers - Standards: Containers.

(a) Applicability. The provisions of Section R315-261-1086 apply to the control of air pollutant emissions from containers for which Subsection R315-261-1082(b) references the use Section R315-261-1086 for such air emission control.

(b) General requirements.

(1) The remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from each container subject to Section R315-261-1086 in accordance with the following requirements, as applicable to the container.

(i) For a container having a design capacity greater than 0.1 m^3 and less than or equal to 0.46 m^3, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-261-1086(c).

(ii) For a container having a design capacity greater than 0.46 m^3 that is not in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-261-1086(c).

(iii) For a container having a design capacity greater than 0.46 m^3 that is in light material service, the remanufacturer or other person that stores or treats the hazardous secondary material shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in Subsection R315-261-1086(d).

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as specified in Subsection R315-261-1086(f).

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container, e.g., a lid on a drum or a suitably secured tarp on a roll-off box, or may be an integral part of the container structural design, e.g., a "portable tank" or bulk cargo container equipped with a

screw-type cap.

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous secondary material in the container such that no hazardous secondary material is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of Subsection R315-261-1086(c)(1)(ii) or (iii) shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous secondary material to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous secondary material or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous secondary material is in a container using Container Level 1 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the hazardous secondary material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-261-1086, an empty hazardous secondary material container may be open to the atmosphere at any time, i.e., covers and closure devices on such a container are not required to be secured in the closed position.

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other persons that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 261.1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Section R315-261-1086.

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or

treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1086(c)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 m^3 or greater, which do not meet applicable U.S. Department of Transportation regulations as specified in Subsection R315-261-1086(f), are not managing hazardous secondary material in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as specified in Subsection R315-261-1086(f).

(ii) A container that operates with no detectable organic emissions as defined in Section R315-261-1081 and determined in accordance with the procedure specified in Subsection R315-261-1086(g).

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in Subsection R315-261-1086(h).

(2) Transfer of hazardous secondary material in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-261-1086(d) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous secondary material is in a container using Container Level 2 controls, the remanufacturer or other person that stores or treats the hazardous secondary material shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous secondary material or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the remanufacture or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous secondary material from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-261-1086, an empty hazardous secondary material container may be open to the atmosphere at any time, i.e., covers and closure devices are not required to be secured in the closed position on an empty container.

(B) In the case when discrete quantities or batches of material are removed from the container, but the container is not an empty hazardous secondary materials container, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous secondary material. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the remanufacturer or other person that stores or treats the hazardous secondary material shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the remanufacturer or other person that stores or treats the hazardous secondary material based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in Section

R315-261-1081, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The remanufacture or other person that stores or treats the hazardous secondary material using containers with Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous secondary material already is in the container at the time the remanufacturer or other person that stores or treats the hazardous secondary material first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., is not an empty hazardous secondary material container, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Section R315-261-1086.

(ii) In the case when a container used for managing hazardous secondary material remains at the facility for a period of 1 year or more, the remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the remanufacturer or other person that stores or treats the hazardous secondary material shall repair the defect in accordance with the requirements of Subsection R315-261-1086(d)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the remanufacturer or other person that stores or treats the hazardous secondary material shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous secondary material shall be removed from the container and the container shall not be used to manage hazardous secondary material until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of Subsection R315-261-1086(e)(2)(ii).

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of Subsections R315-261-1086(e)(2)(i) and (ii).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material shall meet the following requirements, as applicable to the type of air emission control equipment selected by the remanufacturer or other person that stores or treats the hazardous secondary material:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The remanufacturer or other person that stores or treats the hazardous secondary material shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-261-1087.

(3) Safety devices, as defined in Section R315-261-1081, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of Subsection R315-261-1086(e)(1).

(4) Remanufacturers or other persons that store or treat the hazardous secondary material using Container Level 3 controls in accordance with the provisions of Sections R315-261-1080 through 1089 shall inspect and monitor the closed-vent systems and control devices as specified in Section R315-261-1087.

(5) Remanufacturers or other persons that store or treat the hazardous secondary material that use Container Level 3 controls in accordance with the provisions of Sections R315-261-1080 through 1089 shall prepare and maintain the records specified in Subsection R315-261-1089(d).

(6) Transfer of hazardous secondary material in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous secondary material to the atmosphere, to the extent practical, considering the physical properties of the hazardous secondary material and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-261-1086(e) include using any one of the following: a submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous secondary material is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with Subsection R315-261-1086(c)(1)(i) or (d)(1)(i), containers shall be used that meet the applicable U.S. Department of Transportation regulations on packaging hazardous materials for transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178 or part 179.

(2) Hazardous secondary material is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B and 49 CFR parts 172, 173, and 180.

(3) For the purpose of complying with Sections R315-261-1080 through 1089, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed.

(g) To determine compliance with the no detectable organic emissions requirement of Subsection R315-261-1086(d)(1)(ii), the procedure specified in Subsection R315-261-1083(d) shall be used.

(1) Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: the interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated

closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous secondary materials expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with Subsection R315-261-1086(d)(1)(iii).

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A.

(2) A pressure measurement device shall be used that has a precision of +/- 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

R315-261-1087. Air Emission Standards for Tanks and Containers - Standards: Closed-Vent Systems and Control Devices.

(a) Section R315-261-1087 applies to each closed-vent system and control device installed and operated by the remanufacturer or other person who stores or treats the hazardous secondary material to control air emissions in accordance with standards of Sections R315-261-1080 through 1089.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous secondary material in the hazardous secondary material management unit to a control device that meets the requirements specified in Subsection R315-261-1087(c).

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in Subsection R315-261-1033(k).

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in Subsection R315-261-1087(b)(3)(i) or a seal or locking device as specified in Subsection R315-261-1087(b)(3)(ii). For the purpose of complying with Subsection R315-261-1087(b)(3), low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with Subsection R315-261-1087(b)(3), the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For Subsection R315-261-1087(b), a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with Subsection R315-261-1087(b)(3), the device shall be placed on the mechanism by which the bypass device position is controlled, e.g., valve handle, damper lever, when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The remanufacturer or other person that stores or treats the hazardous secondary material shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the procedure specified in Subsection R315-261-1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of Subsection R315-261-1033(c); or

(iii) A flare designed and operated in accordance with the requirements of Subsection R315-261-1033(d).

(2) The remanufacturer or other person that stores or treats the hazardous secondary material who elects to use a closed-vent system and control device to comply with the requirements Section R315-261-1087 shall comply with the requirements specified in Subsections R315-261-1087(c)(2)(i) through (vi).

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in Subsections R315-261-1087(c)(1)(i) through (iii) for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in Subsections R315-261-1087(c)(1)(i) through (iii) for control devices do not apply during a control device system malfunction.

(iv) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate compliance with the requirements of Subsection R315-261-1087(c)(2)(i), i.e., planned routine maintenance of a control device, during which the control device does not meet the specifications of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, shall not exceed 240 hours per year, by recording the information specified in Subsection R315-261-1089(e)(1)(v).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The remanufacturer or other person that stores or treats the hazardous secondary material shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction, i.e., periods when the control device is not operating or not operating normally, except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The remanufacturer or other person that stores or treats the hazardous secondary material using a carbon adsorption system to comply with Subsection R315-261-1087(c)(1) shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Subsection R315-261-1033(g) or (h).

(ii) All carbon that is hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of Subsection R315-261-1033(n), regardless of the average volatile organic concentration of the carbon.

(4) A remanufacturer or other person that stores or treats the hazardous secondary material using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with Subsection R315-261-1087(c)(1) shall operate and maintain the control device in accordance with the requirements of Subsection R315-261-1033(j).

(5) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a control device achieves the performance requirements of Subsection R315-261-1087(c)(1) as follows:

(i) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate using either a performance test as specified in Subsection R315-261-1087(c)(5)(iii) or a design analysis as specified in Subsection R315-261-1087(c)(5)(iv) the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(ii) A remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate the performance of each flare in accordance with the requirements specified in Subsection R315-261-1033(e).

(iii) For a performance test conducted to meet the requirements of Subsection R315-261-1087(c)(5)(i), the remanufacturer or other person that stores or treats the hazardous secondary material shall use the test methods and procedures specified in Subsections R315-261-1034(c)(1) through (4).

(iv) For a design analysis conducted to meet the requirements of Subsection R315-261-1087(c)(5)(i), the design analysis shall meet the requirements specified in Subsection R315-261-1035(b)(4)(iii).

(v) The remanufacturer or other person that stores or treats the hazardous secondary material shall demonstrate that a carbon adsorption system achieves the performance requirements of Subsection R315-261-1087(c)(1) based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the remanufacturer or other person that stores or treats the hazardous secondary material and the Director do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the remanufacturer or other person that stores or treats the hazardous secondary material in accordance with the requirements of Subsection R315-261-1087(c)(5)(iii). The Director may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the remanufacture or other person that stores or treats the hazardous secondary material in accordance with the procedures specified in Subsections R315-261-1033(f)(2) and (l). The readings from each monitoring device required by Subsection R315-261-1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements Section R315-261-1087.

R315-261-1088. Air Emission Standards for Tanks and Containers - Inspection and Monitoring Requirements.

(a) The remanufacturer or other person that stores or treats the hazardous secondary material shall inspect and monitor air emission control equipment used to comply with Sections R315-261-1080 through 1089 in accordance with the applicable requirements specified in Sections R315-261-1084 through 1087.

(b) The remanufacture or other person that stores or treats the hazardous secondary material shall develop and implement a written plan and schedule to perform the inspections and monitoring required by Subsection R315-261-1088(a). The remanufacturer or other person that stores or treats the hazardous secondary material shall keep the plan and schedule at the facility.

R315-261-1089. Air Emission Standards for Tanks and Containers - Recordkeeping Requirements.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of Sections R315-261-1080 through 1089 shall record and maintain the information specified in Subsections R315-261-1089(b) through (j), as applicable to the facility. Except for air emission control equipment design documentation and information required by Subsections R315-261-1089(i) and (j), records required by Section R315-261-1089 shall be maintained at the facility for a minimum of 3 years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by Subsections R315-261-1089(i) and (j) shall be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in Sections R315-261-1084 through 1087 in accordance with the conditions specified in Subsection R315-261-1080(b)(7) or (d), respectively.

(b) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank with air emission controls in accordance with the requirements of Section R315-261-1084 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of Section R315-261-1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall record:

(i) A tank identification number (or other unique identification description as selected by the remanufacturer or other person that stores or treats the hazardous secondary material).

(ii) A record for each inspection required by Section R315-261-1084 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of Section R315-261-1084, the remanufacturer or other person that stores or treats the hazardous secondary material shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by Subsection R315-261-1089(b)(1), the remanufacturer or other person that stores or treats the hazardous secondary material shall record the following information, as applicable to the tank:

(i) The remanufacturer or other person that stores or treats the hazardous secondary material using a fixed roof to comply with the Tank Level 1 control requirements specified in Subsection R315-261-1084(c) shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous secondary material in the tank performed in accordance with the requirements of Subsection R315-261-1084(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The remanufacturer or other person that stores or treats the hazardous secondary material using an internal floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(e) shall prepare and maintain documentation describing the floating roof design.

(iii) Remanufacturer or other persons that store or treat the hazardous secondary material using an external floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(f) shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by Subsection R315-261-1084(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Subsection R315-261-1084(f)(1), the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each remanufacturer or other person that stores or treats the hazardous secondary material using an enclosure to comply with the Tank Level 2 control requirements specified in Subsection R315-261-1084(i) shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-261-1089(e).

(c) Reserved

(d) The remanufacturer or other person that stores or treats the hazardous secondary material using containers with Container Level 3 air emission controls in accordance with the requirements of Subsection R315-261-1086 shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the remanufacturer or other person that stores or treats the hazardous secondary material to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-261-1089(e).

(e) The remanufacturer or other person that stores or treats the hazardous secondary material using a closed-vent system and control device in accordance with the requirements of Subsection R315-261-1087 shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the remanufacturer or other person that stores or treats the hazardous secondary material stating that the control device is designed to operate at the performance level documented by a design analysis as specified in Subsection R315-261-1089(e)(1)(ii) or by performance tests as specified in Subsection R315-261-1089(e)(1)(iii) when the tank or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in Subsection R315-261-1035(b)(4). The documentation shall include information prepared by the remanufacturer or other person that stores or treats the hazardous secondary material or provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsection R315-261-1035(b)(4)(iii) and certification by the remanufacturer or other person that stores or treats the hazardous secondary material that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in Subsection R315-261-1035(b)(3) and all test results.

(iv) Information as required by Subsections R315-261-1035(c)(1) and 261.1035(c)(2), as applicable.

(v) A remanufacturer or other person that stores or treats the hazardous secondary material shall record, on a semiannual basis, the information specified in Subsections R315-261-1089(e)(1)(v)(A) and (B) for those planned routine maintenance operations that would require the control device not to meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable, due to planned routine maintenance.

(vi) A remanufacturer or other person that stores or treats the hazardous secondary material shall record the information specified in Subsections R315-261-1089(e)(1)(vi)(A) through (C) for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Subsection R315-261-1087(c)(1)(i), (ii), or (iii), as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the hazardous secondary material management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Subsection R315-261-1087(c)(3)(ii).

(f) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material

organic concentration conditions specified in Subsections R315-261-1082(c)(1) or (c)(2)(i) through (vi), shall prepare and maintain at the facility records documenting the information used for each material determination, e.g., test results, measurements, calculations, and other documentation. If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of Section R315-261-1083.

(g) A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as "unsafe to inspect and monitor" pursuant to Subsection R315-261-1084(l) or Subsection R315-261-1085(g) shall record and keep at facility the following information: The identification numbers for hazardous secondary material management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The remanufacturer or other person that stores or treats the hazardous secondary material that is subject to Sections R315-261-1080 through 1089 and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of Sections R315-261-1080 through 1089 by documentation either pursuant to Sections R315-261-1080 through 1089, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by Section R315-261-1089.

R315-261-1090. Appendix I to Rule R315-261 -- Representative Sampling Methods.

The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, shall be considered by the Agency to be representative of the waste.

Extremely viscous liquid-ASTM Standard D140-70 Crushed or powdered material-ASTM Standard D346-75 Soil or rock-like material-ASTM Standard D420-69 Soil-like material-ASTM Standard D1452-65

Fly Ash-like material-ASTM Standard D2234-76, ASTM Standards are available from ASTM, 1916 Race St., Philadelphia, PA 19103

Containerized liquid waste-"COLIWASA."

Liquid waste in pits, ponds, lagoons, and similar reservoirs-"Pond Sampler."

This manual also contains additional information on application of these protocols.

R315-261-1090. Appendix VII to Rule R315-261-Basis for Listing Hazardous Waste.

TABLE

EPA hazardous waste No.	Hazardous constituents for which listed
F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane.
F003	N.A.
F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, 2-nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F020	Tetra- and pentachlorodibenzo-p-dioxins; tetra and pentachlorodi-benzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F021	Penta- and hexachlorodibenzo-p- dioxins; penta- and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F023	Tetra-, and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1-2-dichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichloroethylene, 1,1,1,2-tetra-chloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3-chloropropene), dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorbenzene, dichlorobenzenes, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane; Dichloromethane; Trichloromethane; Carbon tetrachloride; Chloroethylene; 1,1-Dichloroethane; 1,2-Dichloroethane; trans-1,2-Dichloroethylene; 1,1-Dichloroethylene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane; Trichloroethylene; 1,1,1,2-Tetrachloroethane; 1,1,2,2-Tetrachloroethane; Tetrachloroethylene; Pentachloroethane; Hexachloroethane; Allyl chloride (3-Chloropropene); Dichloropropane; Dichloropropene; 2-Chloro-1,3-butadiene; Hexachloro-1,3-butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzene; 1,2,4-Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.
F026	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans.
F027	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F028	Tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlorodibenzofurans; tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.

F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F039	All constituents for which treatment standards are specified for multi-source leachate (wastewaters and nonwastewaters) under Section R315-268-43, Table CCW.
F999	CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.
K001	Pentachlorophenol, phenol, 2-chlorophenol, p-chloro-m-cresol, 2,4-dimethylphenyl, 2,4-dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4-dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.
K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers (bis(chloromethyl) ether and bis (2-chloroethyl) ethers), trichloropropane, dichloropropanols.
K018	1,2-dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, tetrachloroethanes (1,1,2,2-tetrachloroethane and 1,1,1,2-tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4-naphthoquinone.
K025	Meta-dinitrobenzene, 2,4-dinitrotoluene.
K026	Paraldehyde, pyridines, 2-picoline.
K027	Toluene diisocyanate, toluene-2, 4-diamine.
K028	1,1,1-trichloroethane, vinyl chloride.
K029	1,2-dichloroethane, 1,1,1-trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.
K036	Toluene, phosphorodithioic and phosphorothioic acid esters.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K041	Toxaphene.
K042	Hexachlorobenzene, ortho-dichlorobenzene.
K043	2,4-dichlorophenol, 2,6-dichlorophenol, 2,4,6-trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead.
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, napthalene, phenolic compounds, arsenic.
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2-tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K088	Cyanide (complexes).
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane.
K096	1,2-dichloroethane, 1,1,1-trichloroethane, 1,1,2-trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4-dichlorophenol, 2,4,6-trichlorophenol.
K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine.
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6-trichlorophenol.
K106	Mercury.
K107	1,1-Dimethylhydrazine (UDMH).
K108	1,1-Dimethylhydrazine (UDMH).
K109	1,1-Dimethylhydrazine (UDMH).
K110	1,1-Dimethylhydrazine (UDMH).
K111	2,4-Dinitrotoluene.
K112	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K113	2,4-Toluenediamine, o-toluidine, p-toluidine, aniline.
K114	2,4-Toluenediamine, o-toluidine, p-toluidine.
K115	2,4-Toluenediamine.
K116	Carbon tetrachloride, tetrachloroethylene, chloroform, phosgene.
K117	Ethylene dibromide.
K118	Ethylene dibromide.
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
K131	Dimethyl sulfate, methyl bromide.
K132	Methyl bromide.
K136	Ethylene dibromide.
K141	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K142	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K143	Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145	Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene.
K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K149	Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene, hexachlorobenzene,

	pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, toluene.
K150	Carbon tetrachloride, chloroform, chloromethane, 1,4-dichlorobenzene, hexachlorobenzene, pentachlorobenzene, 1,2,4,5-tetrachlorobenzene, 1,1,2,2-tetrachloroethane, tetrachloroethylene, 1,2,4-trichlorobenzene.
K151	Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.
K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K157	Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam-sodium, ziram.
K169	Benzene.
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo (a) anthracene, benzo (b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7, 12-dimethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.
K174	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-p-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo-p-dioxins), TCDFs (All tetrachlorodibenzofurans).
K175	Mercury
K176	Arsenic, Lead.
K177	Antimony.
K178	Thallium.
K181	Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.

N.A.-Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.

R315-261-1092. Appendix VIII to Rule 315-261-Hazardous Constituents.

Appendix VIII to 40 CFR Part 261, 2015 Ed., is adopted and incorporated by reference, with the following addition:

(a) P999 - CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.

R315-261-1093. Appendix IX to Rule 315-261-Hazardous Constituents.

Appendix IX to 40 CFR Part 261, 2015 Ed., is adopted and incorporated by reference

KEY: hazardous waste
August 15, 2016 **19-6-105**
19-6-106

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-264-1. Purpose, Scope and Applicability.

(a) The purpose of Rule R315-264 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in Rule R315-264 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in Rules R315-264 or 261.

(c) Reserved

(d) The requirements of Rule R315-264 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by 40 CFR 144.14. Rule R315-264 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(e) The requirements of Rule R315-264 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 Rule R315-270.

(f) Reserved

(g) The requirements of Rule R315-264 do not apply to:

(1) The owner or operator of a facility permitted under Rules R315-301 through 320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Section R315-261-5;

(2) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a)(2), (3), and (4), except to the extent they are referred to in Rule R315-15 or Sections R315-266-20 through 23, 70, 80, or 100 through 112.

(3) A generator accumulating waste on-site in compliance with Section R315-262-34;

(4) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70; or

(5) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in Section R315-268-40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in Subsection R315-264-17(b).

(7) Reserved

(8)(i) Except as provided in Subsection R315-264-1(g)(8)(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;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by Rule R315-264 shall comply with all applicable requirements of Sections R315-264-30 through 35, 37 and 50 through 56.

(iii) Any person who is covered by Subsection R315-264-1(g)(8)(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 Rule R315-264 and 40 CFR 122 and 123 and Rule R315-124 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal 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.

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less.

(10) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, 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 Subsections R315-264-17(b), 264-171, and 264-172 are complied with.

(11) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed below. These handlers are subject to regulation under Rule R315-273, when handling the below listed universal wastes.

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4;

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-272-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(h) The requirements of Rule R315-264 apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in Rule R315-268.

(i) Reserved

(j) The requirements of Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 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, Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 do apply to the facility subject to the traditional hazardous waste permit. Instead of the requirements of Sections R315-264-10 through 19, 30 through 37, and 50 through 56, owners or operators of remediation waste management sites shall:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis shall contain all of the information which shall be known to treat, store or dispose of the waste according to Rules R315-264 and 268, and shall 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 shall 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, shall not cause a violation of the requirements of Rule R315-264;

(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 shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and shall 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 shall 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 Rule R315-264, 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 Sections R315-264-170 through 179,190 through 200, 220 through 232, 250 through 259, 270 Through 283, 300 through 317, 340 through 351, and 600 through 603, the owner/operator shall 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 Subsection R315-264-18(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 Subsections R315-264-221(c) and (d), 264-251(c) and (d), and 264-301(c) and (d) at the remediation waste management site, according to the requirements of Section R315-264-19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures shall address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan shall 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 shall explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and shall 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 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 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;

(12) Develop, maintain and implement a plan to meet the requirements in Subsections R315-264-1(j)(2) through (j)(6) and (j)(9) through (j)(10); and

(13) Maintain records documenting compliance with Subsections R315-264-1(j)(1) through (j)(12).

R315-264-3. 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 RCRA and regulations under Section R315-270-70-shall comply with the regulations specified in Rule 265 in lieu of the regulations in Rule R315-264, until final administrative disposition of his permit application is made, except as provided under Sections R315-264-550 through 555.

R315-264-4. Imminent Hazard Action.

Notwithstanding any other provisions of these regulations, enforcement actions may be brought pursuant to Section 19-5-115.

R315-264-10. Applicability.

(a) The regulations in Sections R315-264-10 through 19 apply to owners and operators of all hazardous waste facilities, except as provided in Section R315-264-1 and in Subsection R315-264-10(b).

(b) Subsection R315-264-18(b) applies only to facilities subject to regulation under Sections R315-264-170 through 179, 190 through 200, 220 through 232, 250 through 259, 270 through 283, 300 through 317, 340 through 351, and 600 through 603.

R315-264-11. Identification Number.

Every facility owner or operator shall apply to Director for an EPA identification number using EPA form 8700-12. Information on obtaining this number can be acquired by contacting the Utah Division of Waste Management and Radiation Control.

R315-264-12. Required Notices.

(a)(1) The 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 date the waste is expected to arrive at the facility. 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 Sections R315-262-80 through 89 shall provide a copy of the movement document bearing all required signatures to the foreign exporter; to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to the competent authorities of all other countries concerned within three working days of receipt of the shipment. The original of the signed movement document shall be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than thirty (30) days after the completion of recovery and no later than one (1)

calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, e-mail without a digital signature followed by mail, or fax followed by mail.

(b) The owner or operator of a facility that receives hazardous waste from an off-site source, except where 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. The owner or operator shall keep a copy of this written notice as part of the operating record.

(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 Rule R315-264 and Rule R315-270. An owner's or operator's failure to notify the new owner or operator of the requirements of Rule R315-264 in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

R315-264-13. General Waste Analysis.

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or nonhazardous wastes if applicable under Subsection R315-264-113(d), he shall obtain a detailed chemical and physical analysis of a representative sample of the wastes. At a minimum, the analysis shall contain all the information which shall be known to treat, store, or dispose of the waste in accordance with Rules R315-264 and 268.

(2) The analysis may include data developed under Rule R315-261, and existing published or documented data on the hazardous waste or on hazardous waste generated from similar processes. For example, the facility's records of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with Subsection R315-264-13(a)(1). The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part of the information required by Subsection R315-264-13(a)(1), except as otherwise specified in Subsections R315-268-7(b) and (c). If the generator does not supply the information, and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information required to comply with Section R315-264-13.

(3) The analysis shall be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis shall be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes, or non-hazardous wastes if applicable under Subsection R315-264-113(d), has changed; and

(ii) For off-site facilities, when the results of the inspection required in Subsection R315-264-13(a)(4) indicate that the hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(4) The owner or operator of an off-site facility shall inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

(b) The owner or operator shall develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with Subsection R315-264-13(a). He shall keep this plan at the facility. At a minimum, the plan shall specify:

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under Subsection R315-264-113(d), will be analyzed and the rationale for the selection of these parameters, i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with Subsection R315-264-13(a);

(2) The test methods which will be used to test for these parameters;

(3) The sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(i) One of the sampling methods described in appendix I of Rule R315-261; or

(ii) An equivalent sampling method. See Section R315-260-21 for related discussion.

(4) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

(5) For off-site facilities, the waste analyses that hazardous waste generators have agreed to supply.

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in Sections R315-264-17, 264-314, 264-341, 264-1083, and 268-7 and Subsections R315-264-1034(d) and 264-1063(d).

(7) For surface impoundments exempted from land disposal restrictions under Subsection R315-268-4(a), the procedures and schedules for:

(i) The sampling of impoundment contents;

(ii) The analysis of test data; and,

(iii) The annual removal of residues which are not delisted under Section R315-260-22 or which exhibit a characteristic of hazardous waste and either:

(A) Do not meet applicable treatment standards of Sections R315-268-40 through 49; or

(B) Where no treatment standards have been established:

(I) Such residues are prohibited from land disposal under Section R315-268-32 or RCRA section 3004(d); or

(II) Such residues are prohibited from land disposal under Subsection R315-268-33(f).

(8) For owners and operators seeking an exemption to the air emission standards of Sections R315-264-1080 through 1091 in accordance with Section R315-264-1082:

(i) If direct measurement is used for the waste determination, the procedures and schedules for waste sampling and analysis, and the results of the analysis of test data to verify the exemption.

(ii) If knowledge of the waste is used for the waste determination, any information prepared by the facility owner or operator or by the generator of the hazardous waste, if the waste is received from off-site, that is used as the basis for knowledge of the waste.

(c) For off-site facilities, the waste analysis plan required in Subsection R315-264-13(b) shall also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan shall describe:

(1) The procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(2) The sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(3) The procedures that the owner or operator of an off-site landfill receiving containerized hazardous waste will use to determine whether a hazardous waste generator or treater has added a biodegradable sorbent to the waste in the container.

R315-264-14. Security.

(a) The 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 Rule R315-264. An owner or operator who wishes to make the demonstration referred to above shall do so with part B of the permit application.

(b) Unless the owner or operator has made a successful demonstration under Subsection R315-264-14(a)(1) and (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 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 Subsection R315-264-14(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 Subsection R315-264-14(b)(1) or (2).

(c) Unless the owner or operator has made a successful demonstration under Subsection R315-264-14(a)(1) and (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 this active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility, e.g., facilities in counties bordering the Canadian province of Quebec shall post signs in French; facilities in counties bordering Mexico shall post signs in Spanish, 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 can be dangerous. See Subsection R315-264-117(b) for discussion of security requirements at disposal facilities during the post-closure care period.

R315-264-15. General Inspection Requirements.

(a) The owner or operator shall inspect his facility 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 a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment.

(b)(1) The owner or operator 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) He shall keep this schedule 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 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 Sections R315-264-174, 193, 195, 226, 254, 278, 303, 347, 602, 1033, 1052, 1053, 1058, and 1083 through 1089. Rule R315-270 requires the inspection schedule to be submitted with part B of the permit application. The Director shall evaluate the schedule along with the rest of the application to ensure that it adequately protects human health and the environment. As part of this review, The Director may modify or amend the schedule as may be necessary.

(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 record inspections in an inspection log or summary. He shall keep these records for at least three years from the date of inspection. 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 or other remedial actions.

R315-264-16. 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 Rule R315-264. The owner or operator shall ensure that this program includes all the elements described in the document required under Subsection R315-264-16(d)(3). Rule R315-270 requires that owners and operators submit with part B of the RCRA permit application, an outline of the training program used, or to be used, at the facility and a brief description of how the training program is designed to meet actual job tasks.

(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 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, 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;
(iv) Response to fires or explosions;
(v) Response to ground-water contamination incidents; and
(vi) Shutdown of operations.
(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to Section R315-264-16, provided that the overall facility training meets all the requirements Section R315-264-16.
(b) Facility personnel shall successfully complete the program required in Subsection R315-264-16(a) within six months after the effective date of these regulations or six months after the date of their 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 regulations shall not work in unsupervised positions until they have completed the training requirements of Subsection R315-264-16(a).
(c) Facility personnel shall take part in an annual review of the initial training required in Subsection R315-264-16(a).
(d) The owner or operator shall maintain the following documents and records at the facility:
(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 Subsection R315-264-16(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 Subsection R315-264-16(d)(1);
(4) Records that document that the training or job experience required under Subsections R315-264-16(a), (b), and (c) has been given to, and completed by, facility personnel.
(e) Training records on current personnel shall be kept until closure of the facility; training records on former employees shall be kept 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.

R315-264-17. 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 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 Rule R315-264, 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 explosions, 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 Subsections R315-264-17(a) or (b), the owner or operator shall document that compliance. This documentation may be based on references to published scientific or engineering literature, data from trial tests, e.g., bench scale or pilot scale tests, waste analyses, as specified in Section R315-264-264-13, or the results of the treatment of similar wastes by similar treatment processes and under similar operating conditions.

R315-264-18. 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. Procedures for demonstrating compliance with this standard in part B of the permit application are specified in Subsection R315-270-14(b)(11). Facilities which are located in political jurisdictions other than those listed in appendix VI of Rule R315-264, are assumed to be in compliance with this requirement.
(2) As used in Subsection R315-264-18(a)(1):
(i) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.
(ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.
(iii) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.
(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, provided that the facility where the waste is moved is a permitted hazardous waste disposal facility or a facility in interim status; 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.
(2) As used in Subsection R315-264-18(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 noncontainerized or bulk liquid hazardous waste 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.

R315-264-19. 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 Subsections R315-264-221(c) and (d), 264-251(c) and (d), and 264-301(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 Subsection R315-264-19(a) shall develop and implement 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 Subsection R315-264-19(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 Sections R315-264-73.

(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 Subsection R315-264-19(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 Sections R315-264-221, 264-251, and 264-301.

(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 Subsections R315-264-221(c)(1)(i)(B), 264-251(c)(1)(i)(B), and 264-301(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 Subsections R315-264-221(c)(1)(i)(B), 264-251(c)(1)(i)(B), and 264-301(c)(1)(i)(B) in the field.

(d) Certification. Waste shall not be received in a unit subject to Section R315-26419 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 Subsections R315-264-221 (c) or (d), 264-251 (c) or (d), or 264-301 (c) or (d); and the procedure in Subsection R315-270-30(l)(2)(ii) has been completed. Documentation supporting the CQA officer's certification shall be furnished to the Director upon request.

R315-264-30. Applicability.

The regulations in Sections R316-264-30 through 37 apply to owners and operators of all hazardous waste facilities, except as Section R315-264-1 provides otherwise.

R315-264-31. 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 release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

R315-264-32. Required Equipment.

All facilities shall be equipped with the following, unless it can be demonstrated to the Director that none of the hazards posed by waste handled at the facility 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 personnel;

(b) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(c) Portable fire extinguishers, fire control equipment; including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals; spill 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.

Rule R315-270 requires that an owner or operator who wishes to make the demonstration referred to above shall do so with part B of the permit application.

R315-264-33. Testing and Maintenance of Equipment.

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

R315-264-34. Access to Communications or Alarm System.

(a) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel 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 such a device is not required under Section R315-264-32.

(b) If there is ever just one employee on the premises while the facility is operating, he shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless the Director has ruled that such a device is not required under Section R315-264-32.

R315-264-35. Required Aisle Space.

The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill 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.

R315-264-37. 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 police, 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 police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police 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 such arrangements, the owner or operator shall document the refusal in the operating record.

R315-264-50. Contingency Plan and Emergency Procedures -- Applicability.

The regulations in Sections R315-264-50 through 56 apply to owners and operators of all hazardous waste facilities, except as Section R315-264-1 provides otherwise.

R315-264-51. 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 release 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 human health or the environment.

R315-264-52. Content of Contingency Plan.

(a) The contingency plan shall describe the actions facility personnel shall take to comply with Sections R315-264-51 and 56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already 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 that are sufficient to comply with the requirements of Rule R315-264. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

(c) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Section R315-264-37.

(d) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Section R315-264-55, 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. For new facilities, this information shall be supplied to the Director at the time of certification, rather than at the time of permit application.

(e) The plan shall include a list of all emergency equipment at the facility; such as fire extinguishing systems, spill 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.

(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 releases of hazardous waste or fires.

R315-264-53. Copies of Contingency Plan.

A copy of the contingency plan and all revisions to the plan shall be:

(a) Maintained at the facility;

(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services; and

(c) Made available upon request. The contingency plan shall be submitted to the Director with Part B of the permit application under Rule R315-270 and, after modification or approval, will become a condition of any permit issued.

R315-264-54. Amendment of Contingency Plan.

The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(a) The facility permit is revised;

(b) The plan fails in an emergency;

(c) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that

materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(d) The list of emergency coordinators changes; or

(e) The list of emergency equipment changes.

R315-264-55. 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 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 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 Section R315-264-56. 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.

R315-264-56. 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 if their help is needed.

(b) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests, and, if necessary, by chemical analysis.

(c) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, 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 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 release, 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 help appropriate officials decide whether local areas should be evacuated; and

(2) He shall immediately notify Utah Department of Environmental Quality as specified in Section R315-263-30 and either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 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., release, fire);

(iv) Name and quantity of material(s) involved, to the extent known;

(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 emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases 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 release waste, and removing or isolating containers.

(f) If the facility stops operations in response to a fire, explosion, or release, the 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 release, fire, or explosion at the facility. Unless the owner or operator can demonstrate, in accordance with Subsection R315-261-3(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 of Rules R315-262, 263, and 264.

(h) The 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 owner or operator shall note 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, explosion);

(4) Name and quantity of material(s) involved;

(5) The extent of injuries, if any;

(6) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(7) Estimated quantity and disposition of recovered material that resulted from the incident.

(j) The facility owner or operator shall notify the Director and other appropriate federal, State, and local authorities, that the facility is in compliance with R315-264-56(h) before operations are resumed in the affected area(s) of the facility.

R315-264-70. Manifest System, Recordkeeping, and Reporting -- Applicability.

(a) The regulations in Sections R315-264-70 through 77 apply to owners and operators of both on-site and off-site facilities, except as Section R315-264-1 provides otherwise. Sections R315-264-71, 72, and 76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources. Subsection R315-264-73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

R315-264-71. Use of Manifest System.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent shall sign and date the manifest as indicated in

Subsection R315-264-71(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 the 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, as defined in Subsection R315-264-72(a), 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, Page 3, of the manifest to the generator,

(v) Within 30 days of delivery, send the top copy, Page 1, of the Manifest to the e-Manifest system for purposes of data entry and processing. In lieu of mailing this paper copy to EPA, the owner or operator may transmit to the EPA system an image file of Page 1 of the manifest, or both a data string file and the image file corresponding to Page 1 of the manifest. Any data or image files transmitted to EPA under Subsection R315-264-71(a) shall be submitted in data file and image file formats that are acceptable to EPA and that are supported by EPA's electronic reporting requirements and by the electronic manifest system.

(vi) 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 and documentation confirming EPA's consent to the import of hazardous waste to the following address within thirty days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and Utah Division of Waste Management and Radiation Control, 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 Subsection R315-264-72(a), in the manifest or shipping paper, if the manifest has not been received, on each copy of the manifest or shipping paper. The Director does not intend that the owner or operator of a facility whose procedures under R315-264-13(c) include waste analysis shall perform that analysis before signing the shipping paper and giving it to the transporter. Subsection R315-264-72(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: Subsection R315-262-23(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 Rule R315-262. The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of Section R315-262-34 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 Sections R315-262-80 through 89 the owner or operator of a facility shall provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement 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.

(f) Legal equivalence to paper manifests. Electronic manifests that are obtained, completed, and transmitted in accordance with Subsection R315-262-20(a)(3), and used in accordance with Section R315-264-71 in lieu of the paper manifest form are the legal equivalent of paper manifest forms bearing handwritten signatures, and satisfy for all purposes any requirement in these regulations to obtain, complete, sign, provide, use, or retain a manifest.

(1) Any requirement in these regulations for the owner or operator of a facility to sign a manifest or manifest certification by hand, or to obtain a handwritten signature, is satisfied by signing with or obtaining a valid and enforceable electronic signature within the meaning of Section R315-262-25.

(2) Any requirement in these regulations to give, provide, send, forward, or to return to another person a copy of the manifest is satisfied when a copy of an electronic manifest is transmitted to the other person.

(3) Any requirement in these regulations for a manifest to accompany a hazardous waste shipment is satisfied when a copy of an electronic manifest is accessible during transportation and forwarded to the person or persons who are scheduled to receive delivery of the waste shipment.

(4) Any requirement in these regulations for an owner or operator to keep or retain a copy of each manifest is satisfied by the retention of the facility's electronic manifest copies in its account on the e-Manifest system, provided that such copies are readily available for viewing and production if requested by any EPA or Division of Waste Management and Radiation Control inspector.

(5) No owner or operator may be held liable for the inability to produce an electronic manifest for inspection under Section R315-264-71 if the owner or operator can demonstrate that the inability to produce the electronic manifest is due exclusively to a technical difficulty with the electronic manifest system for which the owner or operator bears no responsibility.

(g) An owner or operator may participate in the electronic manifest system either by accessing the electronic manifest system from the owner's or operator's electronic

equipment, or by accessing the electronic manifest system from portable equipment brought to the owner's or operator's site by the transporter who delivers the waste shipment to the facility.

(h) Special procedures applicable to replacement manifests. If a facility receives hazardous waste that is accompanied by a paper replacement manifest for a manifest that was originated electronically, the following procedures apply to the delivery of the hazardous waste by the final transporter:

(1) Upon delivery of the hazardous waste to the designated facility, the owner or operator shall sign and date each copy of the paper replacement manifest by hand in Item 20, Designated Facility Certification of Receipt, and note any discrepancies in Item 18, Discrepancy Indication Space, of the paper replacement manifest,

(2) The owner or operator of the facility shall give back to the final transporter one copy of the paper replacement manifest,

(3) Within 30 days of delivery of the waste to the designated facility, the owner or operator of the facility shall send one signed and dated copy of the paper replacement manifest to the generator, and send an additional signed and dated copy of the paper replacement manifest to the electronic manifest system, and

(4) The owner or operator of the facility shall retain at the facility one copy of the paper replacement manifest for at least three years from the date of delivery.

(i) Special procedures applicable to electronic signature methods undergoing tests. If an owner or operator using an electronic manifest signs this manifest electronically using an electronic signature method which is undergoing pilot or demonstration tests aimed at demonstrating the practicality or legal dependability of the signature method, then the owner or operator shall also sign with an ink signature the facility's certification of receipt or discrepancies on the printed copy of the manifest provided by the transporter. Upon executing its ink signature on this printed copy, the owner or operator shall retain this original copy among its records for at least 3 years from the date of delivery of the waste.

(j) Imposition of user fee for electronic manifest use. An owner or operator who is a user of the electronic manifest format may be assessed a user fee by EPA for the origination or processing of each electronic manifest. An owner or operator may also be assessed a user fee by EPA for the collection and processing of paper manifest copies that owners or operators shall submit to the electronic manifest system operator under Subsection R315-264-71(a)(2)(v). EPA shall maintain and update from time-to-time the current schedule of electronic manifest system user fees, which shall be determined based on current and projected system costs and level of use of the electronic manifest system. The current schedule of electronic manifest user fees shall be published as an appendix to 40 CFR 262.

(k) Electronic manifest signatures. Electronic manifest signatures shall meet the criteria described in Section R315-262-25.

R315-264-72. Manifest Discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences, as defined by Subsection R315-264-72(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 Subsection R315-261-7(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter, e.g., with telephone conversations. If the discrepancy is not resolved within 15 days 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 Subsection R315-261-7(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 Section R315-264-72, it shall 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 Subsections R315-264-72(e) or (f).

(e) Except as provided in Subsections R315-264-72(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 Subsection R315-262-20(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 Subsections R315-264-72(e)(1), (2), (3), (4), (5), and (6).

(f) Except as provided in Subsection R315-264-72(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 Subsection R315-262-20(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 Subsections R315-264-72(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 shall also comply with the exception reporting requirements in Subsection R315-262-42(a).

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in Subsection R315-261-7(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.

R315-264-73. Operating Record.

(a) The owner or operator shall keep a written operating record at his facility.

(b) The following information shall be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by appendix I of Rule R315-264. This information shall be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste shall be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information shall include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information shall be maintained in the operating record until closure of the facility. See Section R315-264-119 for related requirements.

(3) Records and results of waste analyses and waste determinations performed as specified in Sections R315-264-13, 17, 314, 341, 1034, 1063, 1083, and 268-7, and Subsection R315-268-4(a).

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in Subsection R315-264-56(j);

(5) Records and results of inspections as required by Subsection R315-264-15(d), except these data need be kept only three years;

(6) Monitoring, testing or analytical data, and corrective action where required by Sections R315-264-90 through 101, and Sections R315-264-19, 191, 193, 195, 222, 223, 226, 252, 254, 276, 278, 280, 302, 304, 309, 602, 1035, 1064, and 1082 through 1090 and Subsections R315-264-1034(c), 1034(f), 1063(d), and 1063(i). Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which shall be maintained in the operating record until closure of the facility.

(7) For off-site facilities, notices to generators as specified in Subsection R315-264-12(b); and

(8) All closure cost estimates under Section R315-264-142, and for disposal facilities, all post-closure cost estimates under Section R315-264-144. This information shall be maintained in the operating record until closure of the facility.

(9) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment.

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Section R315-268-5, a petition pursuant to Section R315-268-6, or a certification under R315-268-8, and the applicable notice required by a generator under Subsection R315-268-7(a). This information shall be maintained in the operating record until closure of the facility.

(11) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under Sections R315-268-7 or 8;

(12) For an on-site treatment facility, the information contained in the notice, except the manifest number, and the

certification and demonstration if applicable, required by the generator or the owner or operator under Sections R315-268-7 or 8;

(13) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Sections R315-268-7 or 8, whichever is applicable; and

(14) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under Section R315-268-7, except for the manifest number, and the certification and demonstration if applicable, required under Section R315-268-8, whichever is applicable.

(15) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Sections R315-268-7 or 8; and

(16) For an on-site storage facility, the information contained in the notice, except the manifest number, and the certification and demonstration if applicable, required by the generator or the owner or operator under Sections R315-268-7 or 8.

(17) Any records required under Subsection R315-264-1(j)(13).

(18) Monitoring, testing or analytical data where required by Section R315-264-347 shall be maintained in the operating record for five years.

(19) Certifications as required by Subsection R315-264-196(f) shall be maintained in the operating record until closure of the facility.

R315-264-74. Availability, Retention, and Disposition of Records.

(a) All records, including plans, required under Rule R315-264 shall be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of EPA who is duly designated by the Administrator, or any designated representative of the Director.

(b) The retention period for all records required under Rule R315-264 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 and quantities under Subsection R315-264-73(b)(2) shall be submitted to the Director and local land authority upon closure of the facility.

R315-264-75. Biennial Report.

The owner or operator 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 report shall cover facility activities during the previous calendar year and shall include:

(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 the facility received a hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) Reserved

(g) The most recent closure cost estimate under Sections R315-264-142, and, for disposal facilities, the most recent post-closure cost estimate under Section R315-264-144; and

(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 such information is available for the years prior to 1984.

(j) The certification signed by the owner or operator of the facility or his authorized representative.

R315-264-76. 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 by Subsection R315-263-20(e), and if the waste is not excluded from the manifest requirement by Rules R315-260, through 266, 268, 270, and 273 then the owner or operator shall prepare and submit a letter to the Director within 15 days after receiving the waste. The unmanifested waste report shall contain 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.

R315-264-77. Additional Reports.

In addition to submitting the biennial reports and unmanifested waste reports described in Sections R315-264-75 and 76, the owner or operator shall also report to the Director:

(a) Releases, fires, and explosions as specified in Subsection R315-264-56(j);

(b) Facility closures specified in Section R315-264-115; and

(c) As otherwise required by Sections R315-264-90 through 101, 220 through 232, 250 through 259, 270 through 283, 300 through 317, 1030 through 1049, 1050 through 1079, and 1080 through 1091.

R315-264-90. Releases From Solid Waste Management Units -- Applicability.

(a)(1) Except as provided in Subsection R315-264-90 (b), the regulations in Sections R315-264-90 through 101 apply to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator shall satisfy the requirements identified in Subsection R315-264-90(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 such units.

(2) All solid waste management units shall comply with the requirements in Section R315-264-101. 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 Sections R315-264-91 through 100 in lieu of Section R315-264-101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The financial responsibility requirements of Section R315-264-101 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 Sections R315-264-90 through 101 if:

(1) The owner or operator is exempted under Section R315-264-1; 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 liquids,

(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 shall 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 Section R315-264-280(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 Section R35-264-278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under Subsection R315-264-90(b) can only relieve an owner or operator of responsibility to meet the requirements of Sections R315-264-90 through 101 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 Section R315-264-117. 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 Subsection R315-264-90(b) on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a pile in compliance with Section R315-264-250(c).

(c) The regulations under Sections R315-264-90 through 101 apply during the active life of the regulated unit, including the closure period. After closure of the regulated unit, the regulations in Sections R315-264-90 through 101:

(1) Do not apply if all 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 Section R315-264-117 if the owner or operator is conducting a detection monitoring program under Section R315-264-98; or

(3) Apply during the compliance period under Section R315-264-96 if the owner or operator is conducting a compliance monitoring program under Section R315-264-99 or a corrective action program under Section R315-264-100.

(d) Regulations in Sections R315-264-90 through 101 may apply to miscellaneous units when necessary to comply with Sections R315-264-601 through 603.

(e) The regulations of Sections R315-264-90 through 101 apply to all owners and operators subject to the requirements of Subsection R315-270-1(c)(7), when the Agency issues either a post-closure permit or an enforceable document, as defined in Subsection R315-270-1(c)(7) at the facility. When the Director issues an enforceable document, references in Sections R315-264-90 through 101 to "in the permit" mean "in the enforceable document."

(f) The Director may replace all or part of the requirements of Sections R315-264-91 through 100 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 Subsection R315-270-1(c)(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 Sections R315-264-91 through 100 because alternative requirements will protect human health and the environment.

R315-264-91. Required Programs.

(a) Owners and operators subject to Sections R315-264-90 through 101 shall conduct a monitoring and response program as follows:

(1) Whenever hazardous constituents under Section R315-264-93 from a regulated unit are detected at a compliance point under Section R315-264-95, the owner or operator shall institute a compliance monitoring program under Section R315-264-99. Detected is defined as statistically significant evidence of contamination as described in Subsection R315-264-98(f);

(2) Whenever the ground-water protection standard under Section R315-264-92 is exceeded, the owner or operator shall institute a corrective action program under Section R315-264-100. Exceeded is defined as statistically significant evidence of increased contamination as described in Subsection R315-264-99(d);

(3) Whenever hazardous constituents under Section R315-264-93 from a regulated unit exceed concentration limits under Section R315-264-94 in ground water between the compliance point under Section R315-264-95 and the downgradient facility property boundary, the owner or operator shall institute a corrective action program under Section R315-264-100; or

(4) In all other cases, the owner or operator shall institute a detection monitoring program under Section R315-264-98.

(b) The Director shall 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 Subsection R315-264-91(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 shall 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 such a program could be taken.

R315-264-92. Ground-Water Protection Standard.

The owner or operator shall comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under Section R315-264-93 detected in the ground water from a regulated unit do not exceed the concentration limits under Section R315-264-94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under Section R315-264-95 during the compliance period under Section R315-264-96. The Director shall establish this ground-water protection standard in the facility permit when hazardous constituents have been detected in the ground water.

R315-264-93. Hazardous Constituents.

(a) The Director shall specify in the facility permit the hazardous constituents to which the ground-water protection standard of Section R315-264-92 applies. Hazardous constituents are constituents identified in appendix VIII of Rule R315-261 that have been detected in ground water in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the Director has excluded them under Subsection R315-264-93(b).

(b) The Director shall exclude a Rule R315-261 appendix VIII 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 shall consider the following:

(1) Potential adverse effects on ground-water 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 ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water 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 ground water, and the direction of ground-water 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 Subsection R315-264-93(b) about the use of ground water in the area around the facility, the Director shall consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.8.

R315-264-94. Concentration Limits.

(a) The Director shall specify in the facility permit concentration limits in the ground water for hazardous constituents established under Section R315-264-93. The concentration of a hazardous constituent:

(1) Shall not exceed the background level of that constituent in the ground water 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 Ground-water 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 (C10H10Cl6, 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 Subsection R315-264-94(b).

(b) The Director shall establish an alternate concentration limit for a hazardous constituent if he finds 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 shall consider the following factors:

(1) Potential adverse effects on ground-water 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 ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water 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 ground water, and the direction of ground-water 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 Subsection R315-264-94(b) about the use of ground water in the area around the facility the Director shall consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.7.

R315-264-95. Point of Compliance.

(a) The Director shall specify in the facility permit the point of compliance at which the ground-water protection standard of Section R315-264-92 applies and at which monitoring shall be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit.

(2) If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

R315-264-96. Compliance Period.

(a) The Director shall specify in the facility permit the compliance period during which the ground-water protection standard of Section R315-264-92 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 permitting, and the closure period.

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of Section R315-264-99.

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in Subsection R316-264-96(a), the compliance period is extended until the owner or operator can demonstrate that the ground-water protection standard of Section R315-264-92 has not been exceeded for a period of three consecutive years.

R315-264-97. General Ground-Water Monitoring Requirements.

The owner or operator shall comply with the following requirements for any ground-water monitoring program developed to satisfy Sections R315-264-98 through 100:

(a) The ground-water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths to yield ground-water samples from the uppermost aquifer that:

(1) Represent the quality of background ground water that has not been affected by leakage from a regulated unit;

(i) A determination of background ground-water 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 ground-water quality that is representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the point of compliance.

(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 ground-water monitoring systems are not required for each regulated unit provided that provisions for sampling the ground water in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the ground water 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 ground-water 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 ground water.

(d) The ground-water monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of ground-water 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 ground-water monitoring program shall include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents in ground-water samples.

(f) The ground-water monitoring program shall include

a determination of the ground-water surface elevation each time ground water 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(s). 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 shall be as large as necessary to ensure with reasonable confidence that a contaminant release to ground water from a facility will be detected. The owner or operator shall 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 shall 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 shall specify one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent which, upon approval by the Director, shall 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 Subsection R315-264-97(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 Subsection R315-264-97(i).

(1) A parametric analysis of variance, ANOVA, followed by multiple comparisons procedures to identify statistically 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 statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each 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 Subsection R315-264-97(h) for specification in the unit permit shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water 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 ground-water 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, prediction intervals or control charts.

(3) If a control chart approach is used to evaluate ground-water 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 or she 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 or she finds these parameters to be protective of human health and the environment. These parameters shall 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 Subsection R315-264-97(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) Ground-water monitoring data collected in accordance with Subsection R315-264-97(g) including actual levels of constituents shall be maintained in the facility operating record. The Director shall specify in the permit when the data shall be submitted for review.

R315-264-98. Detection Monitoring Program.

An owner or operator required to establish a detection monitoring program under Sections R315-264-90 through 101 shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor for indicator parameters, e.g., specific conductance, total organic carbon, or total organic halogen, waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in ground water. The Director shall 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 ground water; and

(4) The concentrations or values and coefficients of variation of proposed monitoring parameters or constituents

in the ground-water background.

(b) The owner or operator shall install a ground-water monitoring system at the compliance point as specified under Section R315-264-95. The ground-water monitoring system shall comply with Subsections R315-264-97(a)(2), (b), and (c).

(c) The owner or operator shall conduct a ground-water monitoring program for each chemical parameter and hazardous constituent specified in the permit pursuant to Subsection R315-264-98(a) in accordance with Section R315-264-97(g). The owner or operator shall maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under Subsection R315-264-97(h).

(d) The Director shall 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 conditions under Subsection R315-264-98(a) in accordance with Subsection R315-264-97(g).

(e) The owner or operator shall determine the ground-water 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 Subsection R315-264-98(a) at a frequency specified under Subsection R315-264-98(d).

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator shall use the method(s) specified in the permit under Subsection R315-264-97(h). These method(s) shall compare data collected at the compliance point(s) to the background ground-water 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 shall 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 ground-water samples.

(g) If the owner or operator determines pursuant to Subsection R315-264-98(f) that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to Subsection R315-264-98(a) at any monitoring well at the compliance point, he or she 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 ground water in all monitoring wells and determine whether constituents in the list of appendix IX of Rule R315-264 are present, and if so, in what concentration. However, the Director, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the appendix IX list of Rule R315-264 and other representative/related waste constituents.

(3) For any appendix IX compounds found in the analysis pursuant to Subsection R315-264-98(g)(2), the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Director and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents shall form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in Subsection R315-264-98(g)(2), the hazardous constituents found during this initial appendix IX analysis shall 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 Section R315-264-99. The application shall include the following information:

(i) An identification of the concentration of any appendix IX constituent detected in the ground water at each monitoring well at the compliance point;

(ii) Any proposed changes to the ground-water monitoring system at the facility necessary to meet the requirements of Section R315-264-99;

(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 Section R315-264-99;

(iv) For each hazardous constituent detected at the compliance point, a proposed concentration limit under Subsections R315-264-94(a)(1) or (2), or a notice of intent to seek an alternate concentration limit under Subsection R315-264-94(b); and

(5) Within 180 days, submit to the Director:

(i) All data necessary to justify an alternate concentration limit sought under Subsection R315-264-94(b); and

(ii) An engineering feasibility plan for a corrective action program necessary to meet the requirement of Section R315-264-100, unless:

(A) All hazardous constituents identified under Subsection R315-264-98(g)(2) are listed in Table 1 of Section R315-264-94 and their concentrations do not exceed the respective values given in that Table; or

(B) The owner or operator has sought an alternate concentration limit under Subsection R315-264-94(b) for every hazardous constituent identified under Subsection R315-264-98(g)(2).

(6) If the owner or operator determines, pursuant to Subsection R315-264-98(f), that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to Subsection R315-264-98(a) at any monitoring well at the compliance point, he or she 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 ground water. The owner operator may make a demonstration under Subsection R315-264-98(g) in addition to, or in lieu of, submitting a permit modification application under Subsection R315-264-98(g)(4); however, the owner or operator is not relieved of the requirement to submit a permit modification application within the time specified in Subsection R315-264-98(g)(4) unless the demonstration made under Subsection R315-264-98(g) successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under Subsection R315-264-98(g), 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 Subsection R315-264-98(g);

(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 Section R315-264-98.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of Section R315-264-98, he or she shall, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

R315-264-99. Compliance Monitoring Program.

An owner or operator required to establish a compliance monitoring program under Sections R315-264-90 through 101 shall, at a minimum, discharge the following responsibilities:

(a) The owner or operator shall monitor the ground water to determine whether regulated units are in compliance with the ground-water protection standard under Section R315-264-92. The Director shall specify the ground-water protection standard in the facility permit, including:

(1) A list of the hazardous constituents identified under Section R315-264-93;

(2) Concentration limits under Section R315-264-94 for each of those hazardous constituents;

(3) The compliance point under Section R315-264-95; and

(4) The compliance period under Section R315-264-96.

(b) The owner or operator shall install a ground-water monitoring system at the compliance point as specified under Section R315-264-95. The ground-water monitoring system shall comply with Subsections R315-264-97(a)(2), (b), and (c).

(c) The Director shall specify the sampling procedures and statistical methods appropriate for the constituents and the facility, consistent with Subsections R315-264-97(g) and (h).

(1) The owner or operator shall conduct a sampling program for each chemical parameter or hazardous constituent in accordance with Subsection R315-264-97(g).

(2) The owner or operator shall record ground-water analytical data as measured and in form necessary for the determination of statistical significance under Subsection R315-264-97(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 Subsection R315-264-99(a), at a frequency specified under Subsection R315-264-99(f).

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator shall use the method(s) specified in the permit under Subsection R315-264-97(h). The methods(s) shall compare data collected at the compliance point(s) to a concentration limit developed in accordance with Section R315-264-94.

(2) The owner or operator shall determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Director shall 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 ground-water samples.

(e) The owner or operator shall determine the ground-water flow rate and direction in the uppermost aquifer at least annually.

(f) The Director shall specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with Subsection R315-264-97(g).

(g) Annually, the owner or operator shall determine whether additional hazardous constituents from appendix IX of Rule R315-264, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in Subsection R315-264-98(f). To accomplish this, the owner or operator shall consult with the Director to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from appendix IX of Rule R315-264 for which these samples shall be analyzed. If the enhanced sampling event indicates that appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Director, and repeat the 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 or she 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 Subsection R315-264-99(d) that any concentration limits under Section R315-264-94 are being exceeded at any monitoring well at the point of compliance he or she shall:

(1) Notify the Director of this finding in writing within seven days. The notification shall indicate what 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 Section R315-264-100 within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the Director under Subsection R315-264-98(g)(5). The application shall at a minimum include the following information:

(i) A detailed description of corrective actions that will achieve compliance with the ground-water protection standard specified in the permit under Subsection R315-264-99(a); and

(ii) A plan for a ground-water monitoring program that will demonstrate the effectiveness of the corrective action. Such a ground-water monitoring program may be based on a compliance monitoring program developed to meet the requirements of Section R315-264-99.

(i) If the owner or operator determines, pursuant to Subsection R315-264-99(d), that the ground-water concentration limits under Section R315-264-99 are being exceeded at any monitoring well at the point of compliance, he or she 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 ground water. In making a demonstration under Subsection R315-264-99(h), the owner or operator shall:

(1) Notify the Director in writing within seven days that he intends to make a demonstration under Subsection R315-264-99(h);

(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 Section R315-264-99.

(j) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of Section R315-264-99, he shall, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

R315-264-100. Corrective Action Program.

An owner or operator required to establish a corrective action program under Sections R315-264-90 through 101 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 ground-water protection standard under Section R315-264-92. The Director shall specify the ground-water protection standard in the facility permit, including:

(1) A list of the hazardous constituents identified under Section R315-264-93;

(2) Concentration limits under Section R315-264-94 for each of those hazardous constituents;

(3) The compliance point under Section R315-264-95; and

(4) The compliance period under Section R315-264-96.

(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 shall specify the specific measures that will be taken.

(c) The owner or operator shall begin corrective action within a reasonable time period after the ground-water protection standard is exceeded. The Director shall 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 shall specify when the corrective action will begin and such a requirement will operate in lieu of Subsection R315-264-99(i)(2).

(d) In conjunction with a corrective action program, the owner or operator shall establish and implement a ground-water monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under Section R315-264-99 and shall be as effective as that program in determining compliance with the ground-water protection standard under Section R315-264-92 and in determining the success of a corrective action program under Subsection R315-264-100(e), where appropriate.

(e) In addition to the other requirements of Section R315-264-100, the owner or operator shall conduct a corrective action program to remove or treat in place any hazardous constituents under Section R315-264-93 that exceed concentration limits under Section R315-264-94 in groundwater:

(1) Between the compliance point under Section R315-264-95 and the downgradient 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 such action. The owner/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 such releases will be determined on a case-by-case basis.

(3) Corrective action measures under Subsection R315-264-100(e) shall be initiated and completed within a reasonable period of time considering the extent of contamination.

(4) Corrective action measures under Subsection R315-264-100(e) may be terminated once the concentration of hazardous constituents under Section R315-264-93 is reduced to levels below their respective concentration limits under Section R315-264-94.

(f) The owner or operator shall continue corrective action measures during the compliance period to the extent necessary to ensure that the ground-water 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 ground-water 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 ground-water monitoring program under Subsection R315-264-100(d), that the ground-water protection standard of Section R315-264-92 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 annually.

(h) If the owner or operator determines that the corrective action program no longer satisfies the requirements Section R315-264-100, he shall, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

R315-264-101. 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 such unit.

(b) Corrective action shall be specified in the permit in accordance with Section R315-264-101 and Sections R315-264-550 through 555. The permit shall contain schedules of compliance for such corrective action, where such corrective action cannot be completed prior to issuance of the permit, and assurances of financial responsibility for completing such 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 such actions. The owner/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 such releases shall be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action shall be provided.

(d) Section R315-264-101 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.

R315-264-110. Closure and Post-Closure -- Applicability.

Except as Section R315-264-1 provides otherwise:

(a) Sections R315-264-111 through 115, which concern closure, apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections R315-264-116 through 120, which concern post-closure care, apply to the owners and operators of:

(1) All hazardous waste disposal facilities;

(2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in Sections R315-264-228 or 258;

(3) Tank systems that are required under Section R315-264-197 to meet the requirements for landfills; and

(4) Containment buildings that are required under Section R315-264-1102 to meet the requirement for landfills.

(c) The Director may replace all or part of the requirements of Sections R315-264-110 through 120, including the unit-specific standards referenced in Subsection R315-264-111(c) applying to a regulated unit, with alternative requirements set out in a permit or in an enforceable document, as defined in Subsection R315-270-1(c)(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 closure requirements of Sections R315-264-110 through 120, and those referenced herein, because the alternative requirements will protect human health and the environment and will satisfy the closure performance standard of Subsections R315-264-111(a) and (b).

R315-264-111. Closure Performance Standard.

The owner or operator shall close the facility in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of Rule R315-264, including, but not limited to, the requirements of Sections R315-264-178, 197, 228, 258, 280, 310, 351, 601 through 603, and 1102.

R315-264-112. Closure plan; Amendment of Plan.

(a) Written plan.

(1) The owner or operator of a hazardous waste management facility shall have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by Subsections R315-264-228(c)(1)(i) and 258(c)(1)(i) to have contingent closure plans. The plan shall be submitted with the permit application, in accordance with Subsection R315-270-14(b)(13), and approved by the Director as part of the permit issuance procedures under Rule R315-124. In accordance with Section R315-270-32, the approved closure plan shall become a condition of any permit.

(2) Plans shall be consistent with Sections R315-264-111 through 115 and the applicable requirements of Sections R315-264-90 through 101, Sections R315-264-178, 197, 228, 258, 280, 310, 351, 601, and 1102. Until final closure is completed and certified in accordance with Section R315-264-115, a copy of the approved plan and all approved revisions shall be furnished to the Director upon request, including requests by mail.

(b) Content of plan. The plan shall identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan shall include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with Section R315-264-111;

(2) A description of how final closure of the facility will be conducted in accordance with Section R315-264-111. The description shall identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule shall include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover shall be included.

(7) For facilities that use trust funds to establish financial assurance under Section R315-264-143 or Section R315-264-145 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(8) For facilities where the Director has applied alternative requirements at a regulated unit under Subsections R315-264-90(f), 264-110(c), and/or Subsection R315-264-140(d), either the alternative requirements applying to the regulated unit, or a reference to the enforceable document containing those alternative requirements.

(c) Amendment of plan. The owner or operator shall submit a written notification of or request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the applicable procedures in Rules R315-124 and 270. The written notification or request shall include a copy of the amended closure plan for review or approval by the Director.

(1) The owner or operator may submit a written notification or request to the Director for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator shall submit a written notification of or request for a permit modification to authorize a change in the approved closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(iv) The owner or operator requests the Director to apply alternative requirements to a regulated unit under Subsections R315-264-90(f), 264-110(c), and/or Subsection R315-264-140(d).

(3) The owner or operator shall submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under Subsection R315-264-228(c)(1)(i) or Subsection R315-264-258(c)(1)(i), shall submit an amended closure plan to the Director no later than 60 days from the date that the owner or operator or Director determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Section R315-264-310, or no later than 30 days from that date if the determination is made during partial or final closure. The Director shall approve, disapprove, or modify this amended plan in accordance with the procedures in Rules R315-124 and 270. In accordance with Section R315-270-32, the approved closure plan shall become a condition of any permit issued.

(4) The Director may request modifications to the plan under the conditions described in Subsection R315-264-112(c)(2). The owner or operator shall submit the modified plan within 60 days of the Director's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Director shall be approved in accordance with the procedures in Rules R315-124 and 270.

(d) Notification of partial closure and final closure.

(1) The owner or operator shall notify the Director in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator shall notify the Director in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner or operator shall notify the Director in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

(2) The date when he "expects to begin closure" shall be either:

(i) No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Director that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Director may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of Subsection R315-264-113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Director that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Director may approve an extension to this one-year limit.

(3) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final administrative order, to cease receiving hazardous wastes or to close, then the requirements of Subsection R315-264-112(d) do not apply. However, the owner or operator shall close the facility in accordance with the deadlines established in Section R315-264-113.

(e) Removal of wastes and decontamination or dismantling of equipment. Nothing in Section R315-264-112 shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

R315-264-113. Closure; Time Allowed for Closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in Subsections R315-264-113(d) and (e), at a hazardous waste management unit or facility, the owner or operator shall treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Director may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The activities required to comply with R315-264-113 will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with Subsections R315-264-113(d) and (e); and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(b) The owner or operator shall complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-

hazardous wastes if the owner or operator complies with all applicable requirements in Subsections R315-264-113(d) and (e), at the hazardous waste management unit or facility. The Director may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with Subsections R315-264-113(d) and (e); and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(c) The demonstrations referred to in Subsections R315-264-113(a)(1) and (b)(1) shall be made as follows:

(1) The demonstrations in Subsection R315-264-113(a)(1) shall be made at least 30 days prior to the expiration of the 90-day period in Subsection R315-264-113(a); and

(2) The demonstration in Subsection R315-264-113(b)(1) shall be made at least 30 days prior to the expiration of the 180-day period in Subsection R315-264-113(b), unless the owner or operator is otherwise subject to the deadlines in Subsection R315-264-113(d).

(d) The Director may allow an owner or operator to receive only non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in Rules R315-270 and 124 and in the permit modification request demonstrates that:

(i) The unit has the existing design capacity as indicated on the part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under Rule R315-264; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(2) The request to modify the permit includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under Subsection R315-264-112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The request to modify the permit and the demonstrations referred to in Subsections R315-264-113(d)(1) and (d)(2) are submitted to the Director no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in Subsection R315-264-113(d), an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in Subsection R315-264-221(c) or (d) shall:

(1) Submit with the request to modify the permit:

(i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under Section R315-264-99; and

(ii) A plan for removing hazardous wastes in compliance with Subsection R315-264-113(e)(2); and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes shall be completed no later than 90 days after the final receipt of hazardous wastes. The Director may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase, or decrease in the case of pH, over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in Sections R315-264-90 through 101, the owner or operator of the unit:

(i) Shall implement corrective measures in accordance with the approved contingent corrective measures plan required by Subsection R315-264-113(e)(1) no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Director to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(5) During the period of corrective action, the owner or operator shall provide annual reports to the Director describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(6) The Director may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year

as required in Subsection R315-264-113(e)(4), or fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

(7) If the owner or operator fails to implement corrective measures as required in Subsection R315-264-113(e)(4), or if the Director determines that substantial progress has not been made pursuant to Subsection R315-264-113(e)(6) he shall:

(i) Notify the owner or operator in writing that the owner or operator shall begin closure in accordance with the deadlines in Subsections R315-264-113(a) and (b) and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Director receives no written comments, the decision shall become final five days after the close of the comment period. The Director shall notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, shall be submitted within 15 days of the final notice and that closure shall begin in accordance with the deadlines in Subsections R315-264-113 (a) and (b).

(iv) If the Director receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Director determines that substantial progress has not been made, closure shall be initiated in accordance with the deadlines in Subsections R315-264-113(a) and (b).

(v) The final determinations made by the Director under Subsections R315-264-113(e)(7)(iii) and (iv) are not subject to administrative appeal.

R315-264-114. Disposal or Decontamination of Equipment, Structures and Soils.

During the partial and final closure periods, all contaminated equipment, structures and soils shall be properly disposed of or decontaminated unless otherwise specified in Sections R315-264-197, 228, 258, 280 or 310. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and shall handle that waste in accordance with all applicable requirements of Rule R315-262.

R315-264-115. Certification of Closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator shall submit to the Director, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification shall be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification shall be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for closure under Subsection R315-264-143(i).

R315-264-116. Survey Plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Director, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat shall be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, shall contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Sections of R315-264-110 through 120.

R315-264-117. Post-Closure Care and Use of Property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections R315-264-117 through 120 shall begin after completion of closure of the unit and continue for 30 years after that date and shall consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Sections R315-264-90 through 101, 220 through 232, 250 through 254, 256 through 259, 270 through 283, 300 through 317, and 600 through 603; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Sections R315-264-90 through 101, 220 through 232, 250 through 254, 256 through 259, 270 through 283, 300 through 317, and 600 through 603.

(2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Director may, in accordance with the permit modification procedures in Rules R315-124 and 270:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment, e.g., leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure; or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment, e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment.

(b) The Director may require, at partial and final closure, continuation of any of the security requirements of Section R315-264-14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure shall never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Director finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities shall be in

accordance with the provisions of the approved post-closure plan as specified in Section R315-264-118.

R315-264-118. Post-Closure Plan; Amendment of Plan.

(a) Written Plan. The owner or operator of a hazardous waste disposal unit shall have a written post-closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by Subsections R315-264-228(c)(1)(ii) and 264-258(c)(1)(ii) to have contingent post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under Subsections R315-264-228(c)(1)(ii) and 264-258(c)(1)(ii) shall submit a post-closure plan to the Director within 90 days from the date that the owner or operator or Director determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Sections R315-264-117 through 120. The plan shall be submitted with the permit application, in accordance with Subsection R315-270-14(b)(13), and approved by the Director as part of the permit issuance procedures under Rule R315-124. In accordance with Section R315-270-32, the approved post-closure plan shall become a condition of any RCRA permit issued.

(b) For each hazardous waste management unit subject to the requirements Section R315-264-118, the post-closure plan shall identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Sections R315-264-90 through 101, 220 through 232, 250 through 259, 270 through 283, 300 through 317, and 600 through 603 during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Sections R315-264-90 through 101, 220 through 232, 250 through 259, 270 through 283, 300 through 317, and 600 through 603; and

(ii) The function of the monitoring equipment in accordance with the requirements of Sections R315-264-90 through 101, 220 through 232, 250 through 259, 270 through 283, 300 through 317, and 600 through 603; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

(4) For facilities where the Director has applied alternative requirements at a regulated unit under Subsections R315-264-90(f), 264-110(c), and/or 264-140(d), either the alternative requirements that apply to the regulated unit, or a reference to the enforceable document containing those requirements.

(c) Until final closure of the facility, a copy of the approved post-closure plan shall be furnished to the Director upon request, including request by mail. After final closure has been certified, the person or office specified in Subsection R315-264-118(b)(3) shall keep the approved post-closure plan during the remainder of the post-closure period.

(d) Amendment of plan. The owner or operator shall submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements in Rules R315-124 and 270. The written notification or request shall include a copy of the amended post-closure plan for review or approval by the Director.

(1) The owner or operator may submit a written notification or request to the Director for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator shall submit a written notification of or request for a permit modification to authorize a change in the approved post-closure plan whenever:

(i) Changes in operating plans or facility design affect the approved post-closure plan, or

(ii) There is a change in the expected year of final closure, if applicable, or

(iii) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

(iv) The owner or operator requests the Director to apply alternative requirements to a regulated unit under Subsections R315-264-90(f), 264-110(c), and/or 264-140(d).

(3) The owner or operator shall submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under Subsections R315-264-228(c)(1)(ii) 258(c)(1)(ii) shall submit a post-closure plan to the Director no later than 90 days after the date that the owner or operator or Director determines that the hazardous waste management unit shall be closed as a landfill, subject to the requirements of Section R315-264-310. The Director shall approve, disapprove or modify this plan in accordance with the procedures in Rules R315-124 and 270. In accordance with Section R315-270-32, the approved post-closure plan shall become a permit condition.

(4) The Director may request modifications to the plan under the conditions described in Subsection R315-264-118(d)(2). The owner or operator shall submit the modified plan no later than 60 days after the Director's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the Director shall be approved, disapproved, or modified in accordance with the procedures in Rules R315-124 and 270.

R315-264-119. Post-Closure Notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator shall submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Director a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator shall identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator shall:

(1) Record, in accordance with State law, a notation on the deed to the facility property-or on some other instrument which is normally examined during title search-that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under Sections R315-264-110 through 120; and

(iii) The survey plat and record of the type, location, and

quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by Section R315-264-116 and Subsection R315-264-119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Director; and

(2) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in Subsection R315-264-119(b)(1), including a copy of the document in which the notation has been placed, to the Director.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he shall request a modification to the post-closure permit in accordance with the applicable requirements in Rules R315-124 and 270. The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the criteria of Subsection R315-264-117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-260 through 266, 268, 270, and 273. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Director approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

R315-264-120. Certification of Completion of Post-Closure Care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Director, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification shall be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification shall be furnished to the Director upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under Subsection R315-264-145(i).

R315-264-140. Financial Requirements -- Applicability.

(a) The requirements of Sections R315-264-142, 143, 147 through 151 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in Section R315-264-140 or in Section R315-264-1.

(b) The requirements of Sections R315-264-144 and 145 apply only to owners and operators of:

(1) Disposal facilities;

(2) Piles, and surface impoundments from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in Sections R315-264-228 and 258;

(3) Tank systems that are required under Section R315-264-197 to meet the requirements for landfills; and

(4) Containment buildings that are required under Section R315-264-1102 to meet the requirements for landfills.

(c) States and the Federal government are exempt from the requirements of Sections R315-264-140 through 151.

(d) The Director may replace all or part of the requirements of Sections R315-264-140 through 151 applying to a regulated unit with alternative requirements for financial assurance set out in the permit or in an enforceable document, as defined in Subsection R315-270-1(c)(7), where the Director:

(1) Prescribes alternative requirements for the regulated unit under Subsection R315-264-90(f) and/or Subsection R315-264-110(c); and

(2) Determines that it is not necessary to apply the requirements of Sections R315-264-140 through 151 because the alternative financial assurance requirements will protect human health and the environment.

R315-264-141. Definitions of Terms as Used in Sections R315-264-140 through 151.

(a) Closure plan means the plan for closure prepared in accordance with the requirements of Section R315-264-112.

(b) Current closure cost estimate means the most recent of the estimates prepared in accordance with Subsections R315-264-142(a), (b), and (c).

(c) Current post-closure cost estimate means the most recent of the estimates prepared in accordance with Subsection R315-264-144(a), (b), and (c).

(d) Parent corporation means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

(e) Post-closure plan means the plan for post-closure care prepared in accordance with the requirements of Sections R315-264-117 through 120.

(f) The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

Assets means all existing and all probable future economic benefits obtained or controlled by a particular entity.

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.

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.

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).

Independently audited refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

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.

Net working capital means current assets minus current liabilities.

Net worth means total assets minus total liabilities and is equivalent to owner's equity.

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.

(g) In the liability insurance requirements the terms bodily injury and property damage shall have the meanings given these terms by applicable State law. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The

Director intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry. The definitions given below of several of the terms are intended to assist in the understanding of these regulations and are not intended to limit their meanings in a way that conflicts with general insurance industry usage.

Accidental occurrence means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

Legal defense costs means any expenses that an insurer incurs in defending against claims of third parties brought under the terms and conditions of an insurance policy.

Nonsudden accidental occurrence means an occurrence which takes place over time and involves continuous or repeated exposure.

Sudden accidental occurrence means an occurrence which is not continuous or repeated in nature.

(h) Substantial business relationship means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the Director.

R315-264-142. Cost Estimate for Closure.

(a) The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in Sections R315-264-111 through 115 and applicable closure requirements in Sections R315-264-178, 197, 228, 258, 280, 310, 351, 601 through 603, and 1102.

(1) The estimate shall equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan, see Subsection R315-264-112(b); and

(2) The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of parent corporation in Subsection R315-264-141(d). The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under Subsection R315-264-113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under Subsection R315-264-113(d), that might have economic value.

(b) During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section R315-264-143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Director as specified in Subsection R315-264-143(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in Subsections R315-264-142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after the Director has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in Subsection R315-264-142(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest closure cost estimate prepared in accordance with Subsection R315-264-142(a) and (c) and, when this estimate has been adjusted in accordance with Subsection R315-264-142(b), the latest adjusted closure cost estimate

R315-264-143. Financial Assurance for Closure.

An owner or operator of each facility shall establish financial assurance for closure of the facility. He shall choose from the options as specified in Subsections R315-264-143(a) through (f).

(a) Closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-264-143 by establishing a closure trust fund which conforms to the requirements of Subsection R315-264-143(a) and submitting an originally signed duplicate of the trust agreement to the Director. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in Subsection R315-264-151(a)(1), and the trust agreement shall be accompanied by a formal certification of acknowledgment, for example, see Subsection R315-264-151(a)(2). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current closure cost estimate covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the closure trust fund shall be made as follows:

(i) For a new facility, the first payment shall be made before the initial receipt of hazardous waste for treatment, storage, or disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the Director before this initial receipt of hazardous waste. The first payment shall be at least equal to the current closure cost estimate, except as provided in Subsection R315-264-143(g), divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this

formula:

Next Payment = (CE-CV)/Y

where CE is the current closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(ii) If an owner or operator establishes a trust fund as specified in 40 CFR 265.143(a), which is adopted by reference; and the value of that trust fund is less than the current closure cost estimate when a permit is awarded for the facility, the amount of the current closure cost estimate still to be paid into the trust fund shall be paid in over the pay-in period as defined in Subsection R315-264-143(a)(3). Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to Rule R315-265. The amount of each payment shall be determined by this formula:

Next Payment = (CE-CV)/Y

where CE is the current closure cost estimate, 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 may accelerate payments into the trust fund or he may deposit the full amount of the current closure cost estimate at the time the fund is established. However, he shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subsection R315-264-143(a)(3).

(5) If the owner or operator establishes a closure trust fund after having used one or more alternate mechanisms specified in Section R315-264-143 or in 40 CFR 265.143, which is adopted by reference, his first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of Section R315-264-143 and 40 CFR 265.143(a), which is adopted by reference; as applicable.

(6) After the pay-in period is completed, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in Section R315-264-143 to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current closure cost estimate, the owner or operator may submit a written request to the Director for release of the amount in excess of the current closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in Section R315-264-143 for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection R315-264-143(a)(7) or (8), the Director shall instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Director shall instruct the trustee to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with Subsection R315-264-143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Director does not instruct the trustee to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(11) The Director shall agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-143 in accordance with Subsection R315-264-143(i).

(b) Surety bond guaranteeing payment into a closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-264-143 by obtaining a surety bond which conforms to the requirements of Subsection R315-264-143(b) and submitting the bond to the Director. An owner or operator of a new facility shall submit the bond to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-264-151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements Section R315-264-143 shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-264-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of Section R315-264-143, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-264-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Director becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent

jurisdiction; or

(iii) Provide alternate financial assurance as specified in Section R315-264-143, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate, except as provided in Subsection R315-264-143(g).

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-143 to cover the increase. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in Section R315-264-143.

(c) Surety bond guaranteeing performance of closure.

(1) An owner or operator may satisfy the requirements of Section R315-264-143 by obtaining a surety bond which conforms to the requirements of Subsection R315-264-143(c) and submitting the bond to the Director. An owner or operator of a new facility shall submit the bond to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-264-151(c).

(3) The owner or operator who uses a surety bond to satisfy the requirements Section R315-264-143 shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust shall meet the requirements specified in Subsection R315-264-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-264-143, the following are not required by Section R315-264-143:

(A) Payments into the trust fund as specified in Subsection R315-264-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(i) Perform final closure in accordance with the closure plan and other requirements of the permit for the facility whenever required to do so; or

(ii) Provide alternate financial assurance as specified in Section R315-264-143, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety shall perform final closure as guaranteed by the bond or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond shall be in an amount at least equal to the current closure cost estimate.

(7) Whenever the current closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-143. Whenever the current closure cost estimate decreases, the penal sum may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent. The Director shall provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-143 in accordance with Subsection R315-264-143(i).

(10) The surety shall not be liable for deficiencies in the performance of closure by the owner or operator after the Director releases the owner or operator from the requirements of Section R315-264-143 in accordance with Subsection R315-264-143(i).

(d) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of Section R315-264-143 by obtaining an irrevocable standby letter of credit which conforms to the requirements of Subsection R315-264-143(d) and submitting the letter to the Director. An owner or operator of a new facility shall submit the letter of credit to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-264-151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-264-143 shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements of the trust fund specified in Subsection R315-264-143(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-264-143, the following are not required by Rule R315-264:

(A) Payments into the trust fund as specified in Subsection R315-264-143(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least 1 year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current closure cost estimate, except as provided in Subsection R315-264-143(g).

(7) Whenever the current closure cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-143 to cover the increase. Whenever the current closure cost estimate decreases, the amount of the credit may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(8) Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Director may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in Section R315-264-143 and obtain written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice from issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Director shall draw on the letter of credit. The Director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in Section R315-264-143 and obtain written approval of such assurance from the Director.

(10) The Director shall return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-143 in accordance with Subsection R315-264-143(i).

(e) Closure insurance.

(1) An owner or operator may satisfy the requirements of Section R315-264-143 by obtaining closure insurance which conforms to the requirements of this Subsection R315-264-143(e) and submitting a certificate of such insurance to the Director. An owner or operator of a new facility shall submit the certificate of insurance to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall 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.

(2) The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(e).

(3) The closure insurance policy shall be issued for a face amount at least equal to the current closure cost estimate, except as provided in Subsection R315-264-143(g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability shall be lowered by the amount of the payments.

(4) The closure insurance policy shall guarantee that funds shall be available to close the facility whenever final closure occurs. The policy shall also guarantee that once final closure begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Director. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Director shall instruct the insurer to make reimbursements in such amounts as the Director specifies in writing, if the Director determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Director has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with Subsection R315-264-143(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Director does not instruct the insurer to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in Subsection R315-264-143(e)(10). Failure to pay the premium, without substitution of alternate financial assurance

as specified in Section R315-264-143, shall constitute a significant violation of these regulations, warranting such remedy as the Director deems necessary. Such violation shall be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(i) The Director deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current closure cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-143 to cover the increase. Whenever the current closure cost estimate decreases, the face amount may be reduced to the amount of the current closure cost estimate following written approval by the Director.

(10) The Director shall give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-143 in accordance with Subsection R315-264-143(i).

(f) Financial test and corporate guarantee for closure.

(1) An owner or operator may satisfy the requirements of Section R315-264-143 by demonstrating that he passes a financial test as specified in Subsection R315-264-143(f). To pass this test the owner or operator shall meet the criteria of either Subsections R315-264-143(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in Subsection R315-264-143(f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, Subsection R315-264-151(f). The phrase "current plugging and abandonment cost estimates" as used in Subsection R315-264-143(f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-264-151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in Subsection R315-264-143(f)(3) to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in Subsection R315-264-143(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-264-143(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-264-143(f)(1), he shall send notice to the Director of intent to establish alternate financial assurance as specified in Section R315-264-143. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of Subsection R315-264-143(f)(1), require reports of financial

condition at any time from the owner or operator in addition to those specified in Subsection R315-264-143(f)(3). If the Director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of Subsection R315-264-143(f)(1), the owner or operator shall provide alternate financial assurance as specified in Section R315-264-143 within 30 days after notification of such a finding.

(8) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-264-143(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in Section R315-264-143 within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in Subsection R315-264-143(f)(3) when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-143; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-143 in accordance with Subsection R315-264-143(i).

(10) An owner or operator may meet the requirements of Section R315-264-143 by obtaining a written guarantee. The guarantor shall 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. The guarantor shall meet the requirements for owners or operators in Subsection R315-264-143(f)(1) through (8) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in Subsection R315-264-151(h). The certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-264-143(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(i) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Subsection R315-264-143(a) in the name of the owner or operator.

(ii) The corporate guarantee shall 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, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in Section R315-264-143 and obtain the written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of Section R315-264-143 by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms shall be as specified in Subsections R315-264-143(a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for closure of the facility.

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in Section R315-264-143 to meet the requirements of Section R315-264-143 for more than one facility. Evidence of financial assurance submitted to the Director shall include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance shall be submitted to and maintained with the State Agency regulating hazardous waste in states other than Utah or with the appropriate Regional Administrator if the facility is located in an unauthorized State. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any of the facilities covered by the mechanism, the Director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of Section R315-264-143. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director shall notify the owner or operator in writing that he is no longer required by Section R315-264-143 to maintain financial assurance for final closure of the facility, unless the Director has reason to believe that final closure has not been in accordance with the approved closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

R315-264-144. Cost Estimate for Post-Closure Care.

(a) The owner or operator of a disposal surface impoundment, disposal miscellaneous unit, land treatment unit, or landfill unit, or of a surface impoundment or waste pile required under Sections R315-264-228 and 258 to prepare a contingent closure and post-closure plan, shall have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Sections R315-264-117 through 120, 228, 258, 280, 310, and 603.

(1) The post-closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. See definition of parent corporation in Subsection R315-264-141(d).

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Section R315-264-117.

(b) During the active life of the facility, the owner or operator shall adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with Section R315-264-145. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate shall be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Director as specified in Subsection R315-264-145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in Subsections R315-264-145(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor.

(c) During the active life of the facility, the owner or operator shall revise the post-closure cost estimate within 30 days after the Director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate shall be adjusted for inflation as specified in Subsection R315-264-144(b).

(d) The owner or operator shall keep the following at the facility during the operating life of the facility: The latest post-closure cost estimate prepared in accordance with Subsection R315-264-144(a) and (c) and, when this estimate has been adjusted in accordance with Subsection R315-264-144(b), the latest adjusted post-closure cost estimate.

R315-264-145. Financial Assurance for Post-Closure Care.

The owner or operator of a hazardous waste management unit subject to the requirements of Section R315-264-144 shall establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. He shall choose from the following options:

(a) Post-closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-264-144 by establishing a post-closure trust fund which conforms to the requirements of Subsection R315-264-145(a) and submitting an originally signed duplicate of the trust agreement to the Director. An owner or operator of a new facility shall submit the originally signed duplicate of the trust agreement to the Director at least 60 days before the date on which hazardous waste is first received for disposal. The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement shall be identical to the wording specified in Subsection R315-264-151(a)(1), and the trust agreement shall be accompanied by a formal certification of acknowledgment, for example, see Subsection R315-264-151(a)(2). Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the current post-closure cost estimate covered by the agreement.

(3) Payments into the trust fund shall be made annually by the owner or operator over the term of the initial RCRA permit or over the remaining operating life of the facility as estimated in the closure plan, whichever period is shorter; this period is hereafter referred to as the "pay-in period." The payments into the post-closure trust fund shall be made as follows:

(i) For a new facility, the first payment shall be made before the initial receipt of hazardous waste for disposal. A receipt from the trustee for this payment shall be submitted by the owner or operator to the Director before this initial receipt of hazardous waste. The first payment shall be at least equal to the current post-closure cost estimate, except as provided in Subsection R315-264-145(g), divided by the number of years in the pay-in period. Subsequent payments shall be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment shall be determined by this formula:

Next payment = (CE-CV)/Y

where CE is the current post-closure cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(ii) If an owner or operator establishes a trust fund as specified in 40 CFR 265.145(a); which is adopted by reference, and the value of that trust fund is less than the current post-closure cost estimate when a permit is awarded for the facility, the amount of the current post-closure cost estimate still to be paid into the fund shall be paid in over the pay-in period as defined in Subsection R315-264-145(a)(3). Payments shall continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to R315-265. The amount of each payment shall be determined by this formula:

Next payment = (CE-CV)/Y

where CE is the current post-closure cost estimate, 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 may accelerate payments into the trust fund or he may deposit the full amount of the current post-closure cost estimate at the time the fund is established. However, he shall maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in Subsection R315-264-145(a)(3).

(5) If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in Section R315-264-145 or in 40 CFR 265.145, which is adopted by reference; his first payment shall be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of Subsection R315-264-145(a) and 40 CFR 265.145(a), which is adopted by reference; as applicable.

(6) After the pay-in period is completed, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in Section R315-264-145 to cover the difference.

(7) During the operating life of the facility, if the value of the trust fund is greater than the total amount of the current post-closure cost estimate, the owner or operator may submit a written request to the Director for release of the amount in excess of the current post-closure cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in Section R315-264-145 for all or part of the trust fund, he may submit a written request to the Director for release of the amount in excess of the current post-closure cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection R315-264-145(a)(7) or (8), the Director shall instruct the trustee to release to the owner or operator such funds as the Director specifies in writing.

(10) During the period of post-closure care, the Director may approve a release of funds if the owner or operator demonstrates to the Director that the value of the trust fund exceeds the remaining cost of post-closure care.

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Director. Within 60 days after receiving bills for post-closure care activities, the Director shall instruct the trustee to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Director does not instruct the trustee to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(12) The Director shall agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-145 in accordance with Subsection R315-264-145(i).

(b) Surety bond guaranteeing payment into a post-closure trust fund.

(1) An owner or operator may satisfy the requirements of Section R315-264-145 by obtaining a surety bond which conforms to the requirements of Subsection R315-264-145(b) and submitting the bond to the Director. An owner or operator of a new facility shall submit the bond to the Director at least 60 days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-264-151(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements Section R315-264-145 shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-264-145(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements Section R315-264-145, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-264-145(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current post-closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before the beginning of final closure of the facility; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Director becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in Section R315-264-145, and obtain the Director's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond shall be in an amount at least equal to the current post-closure cost estimate, except as provided in Subsection R315-264-145(g).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-145 to cover the increase. Whenever the current post-closure cost estimate decreases, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Director.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in Section R315-264-145.

(c) Surety bond guaranteeing performance of post-closure care.

(1) An owner or operator may satisfy the requirements of Section R315-264-145 by obtaining a surety bond which conforms to the requirements of Subsection R315-264-145(c) and submitting the bond to the Director. An owner or operator of a new facility shall submit the bond to the Director at least 60 days before the date on which hazardous waste is first received for disposal. The bond shall be effective before this initial receipt of hazardous waste. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond shall be identical to the wording specified in Subsection R315-264-151(c).

(3) The owner or operator who uses a surety bond to satisfy the requirements of Section R315-264-145 shall also establish a standby trust fund. Under the terms of the bond, all payments made thereunder shall be deposited by the surety directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements specified in Subsection R315-264-145(a), except that:

(i) An originally signed duplicate of the trust agreement

shall be submitted to the Director with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-264-145, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-264-145(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current post-closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond shall guarantee that the owner or operator shall:

(i) Perform post-closure care in accordance with the post-closure plan and other requirements of the permit for the facility; or

(ii) Provide alternate financial assurance as specified in Section R315-264-145, and obtain the Director's written approval of the assurance provided, within 90 days of receipt by both the owner or operator and the Director of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety shall perform post-closure care in accordance with the post-closure plan and other permit requirements or shall deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond shall be in an amount at least equal to the current post-closure cost estimate.

(7) Whenever the current post-closure cost estimate increases to an amount greater than the penal sum during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the penal sum to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-145. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the penal sum may be reduced to the amount of the current post-closure cost estimate following written approval by the Director.

(8) During the period of post-closure care, the Director may approve a decrease in the penal sum if the owner or operator demonstrates to the Director that the amount exceeds the remaining cost of post-closure care.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the Director has given prior written consent. The Director shall provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-145 in accordance with Subsection R315-264-145(i).

(11) The surety shall not be liable for deficiencies in the performance of post-closure care by the owner or operator after the Director releases the owner or operator from the requirements of Section R315-264-145 in accordance with Subsection R315-264-145(i).

(d) Post-closure letter of credit.

(1) An owner or operator may satisfy the requirements of Section R315-264-145 by obtaining an irrevocable standby letter of credit which conforms to the requirements of Subsection R315-264-145(d) and submitting the letter to the Director. An owner or operator of a new facility shall submit the letter of credit to the Director at least 60 days before the date on which hazardous waste is first received for disposal. The letter of credit shall be effective before this initial receipt of hazardous waste. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-264-151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-264-145 shall also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Director shall be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Director. This standby trust fund shall meet the requirements of the trust fund specified in Subsection R315-264-145(a), except that:

(i) An originally signed duplicate of the trust agreement shall be submitted to the Director with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of Section R315-264-145, the following are not required by these regulations:

(A) Payments into the trust fund as specified in Subsection R315-264-145(a);

(B) Updating of Schedule A of the trust agreement, see Subsection R315-264-151(a), to show current post-closure cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for post-closure care of the facility by the letter of credit.

(5) The letter of credit shall be irrevocable and issued for a period of at least 1 year. The letter of credit shall provide that the expiration date shall be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days shall begin on the date when both the owner or operator and the Director have received the notice, as evidenced by the return receipts.

(6) The letter of credit shall be issued in an amount at least equal to the current post-closure cost estimate, except as provided in Subsection R315-264-145(g).

(7) Whenever the current post-closure cost estimate increases to an amount greater than the amount of the credit during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the amount of the credit to be increased so that it at least equals the current post-closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-145 to cover the

increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the amount of the credit may be reduced to the amount of the current post-closure cost estimate following written approval by the Director.

(8) During the period of post-closure care, the Director may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates to the Director that the amount exceeds the remaining cost of post-closure care.

(9) Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, the Director may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified in Section R315-264-145 and obtain written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Director shall draw on the letter of credit. The Director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Director shall draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in Section R315-264-145 and obtain written approval of such assurance from the Director.

(11) The Director shall return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-145 in accordance with Subsection R315-264-145(i).

(e) Post-closure insurance.

(1) An owner or operator may satisfy the requirements of Section R315-264-145 by obtaining post-closure insurance which conforms to the requirements of Subsection R315-264-145(e) and submitting a certificate of such insurance to the Director. An owner or operator of a new facility shall submit the certificate of insurance to the Director at least 60 days before the date on which hazardous waste is first received for disposal. The insurance shall be effective before this initial receipt of hazardous waste. At a minimum, the insurer shall 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.

(2) The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(e).

(3) The post-closure insurance policy shall be issued for a face amount at least equal to the current post-closure cost estimate, except as provided in Subsection R315-264-145(g). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) The post-closure insurance policy shall guarantee that funds will be available to provide post-closure care of the facility whenever the post-closure period begins. The policy shall also guarantee that once post-closure care begins, the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Director, to such party or parties as the Director specifies.

(5) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Director. Within 60 days after receiving bills for post-closure care activities, the Director shall instruct the insurer to make reimbursements in those amounts as the Director specifies in writing, if the Director determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Director does not instruct the insurer to make such reimbursements, he shall provide the owner or operator with a detailed written statement of reasons.

(6) The owner or operator shall maintain the policy in full force and effect until the Director consents to termination of the policy by the owner or operator as specified in Subsection R315-264-145(e)(11). Failure to pay the premium, without substitution of alternate financial assurance as specified in Section R315-264-145, shall constitute a significant violation of these regulations, warranting such remedy as the Director deems necessary. Such violation shall be deemed to begin upon receipt by the Director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Director. Cancellation, termination, or failure to renew may not occur, however, during the 120 days beginning with the date of receipt of the notice by both the Director and the owner or operator, as evidenced by the return receipts. Cancellation, termination, or failure to renew may not occur and the policy shall remain in full force and effect in the event that on or before the date of expiration:

(i) The Director deems the facility abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11, Bankruptcy, U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current post-closure cost estimate increases to an amount greater than the face amount of the policy during the operating life of the facility, the owner or operator, within 60 days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current post-closure cost estimate and submit evidence of such increase to the Director, or obtain other financial assurance as specified in Section R315-264-145 to cover the increase. Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Director.

(10) Commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or

of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(11) The Director shall give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-145 in accordance with Subsection R315-264-145(i).

(f) Financial test and corporate guarantee for post-closure care.

(1) An owner or operator may satisfy the requirements of Section R315-264-145 by demonstrating that he passes a financial test as specified in Subsection R315-264-145(f). To pass this test the owner or operator shall meet the criteria of either Subsection R315-264-145(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in Subsection R315-264-145(f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, Subsection R315-264-151(f). The phrase "current plugging and abandonment cost estimates" as used in Subsection R315-264-145(f)(1) refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer, 40 CFR 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-264-151(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in Subsection R315-264-145(f)(3) to the Director at least 60 days before the date on which hazardous waste is first received for disposal.

(5) After the initial submission of items specified in Subsection R315-264-145(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-264-145(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-264-145(f)(1), he shall send notice to the Director of intent to establish alternate financial assurance as specified in Section R315-264-145. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of Subsection R315-264-145(f)(1), require reports of financial condition at any time from the owner or operator in addition to those specified in Subsection R315-264-145(f)(3). If the Director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of Subsection R315-264-145(f)(1), the owner or operator shall provide alternate financial assurance as specified in Section R315-264-145 within 30 days after notification of such a finding.

(8) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-264-145(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in Section R315-264-145 within 30 days after notification of the disallowance.

(9) During the period of post-closure care, the Director may approve a decrease in the current post-closure cost estimate for which this test demonstrates financial assurance if the owner or operator demonstrates to the Director that the amount of the cost estimate exceeds the remaining cost of post-closure care.

(10) The owner or operator is no longer required to submit the items specified in Subsection R315-264-145(f)(3) when:

(i) An owner or operator substitutes alternate financial assurance as specified in Section R315-264-145; or

(ii) The Director releases the owner or operator from the requirements of Section R315-264-145 in accordance with Subsection R315-264-145(i).

(11) An owner or operator may meet the requirements of Section R315-264-145 by obtaining a written guarantee. The guarantor shall 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. The guarantor shall meet the requirements for owners or operators in Subsections R315-264-145(f)(1) through (9) and shall comply with the terms of the guarantee. The wording of the guarantee shall be identical to the wording specified in Subsection R315-264-

151(h). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-264-145(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

(i) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Subsection R315-264-145(a) in the name of the owner or operator.

(ii) The corporate guarantee shall 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, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Director, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in Section R315-264-145 and obtain the written approval of such alternate assurance from the Director within 90 days after receipt by both the owner or operator and the Director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternate financial assurance in the name of the owner or operator.

(g) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of Section R315-264-145 by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms shall be as specified in Subsections R315-264-145(a), (b), (d), and (e), respectively, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The Director may use any or all of the mechanisms to provide for post-closure care of the facility.

(h) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in Section R315-264-145 to meet the requirements of Section R315-264-145 for more than one facility. Evidence of financial assurance submitted to the Director shall include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for post-closure care assured by the mechanism. If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance shall be submitted to and maintained with the State Agency regulating hazardous waste in states other than Utah or with the appropriate Regional Administrator if the facility is located in an unauthorized State. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the Director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

(i) Release of the owner or operator from the requirements of Section R315-264-145. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Director shall notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Director has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Director shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

R315-264-146. Use of a Mechanism for Financial Assurance of Both Closure and Post-Closure Care.

An owner or operator may satisfy the requirements for financial assurance for both closure and post-closure care for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanism in both Sections R315-264-143 and 145. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for financial assurance of closure and of post-closure care.

R315-264-147. Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in Subsections R315-264-147(a)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-264-147(a).

(i) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-264-151(i). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(j). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by a Director, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements Section R315-264-146 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-264-147(f) and (g).

(3) An owner or operator may meet the requirements of Section R315-264-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-264-147(h).

(4) An owner or operator may meet the requirements Section R315-264-146 by obtaining a surety bond for liability coverage as specified in Subsection R315-264-147(i).

(5) An owner or operator may meet the requirements Section R315-264-146 by obtaining a trust fund for liability coverage as specified in Subsection R315-264-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-264-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-264-147(a), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-264-147(a)(1) through (a)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-264-147(a)(1) through (a)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-264-147(a)(1) through (a)(6).

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit that is used to manage hazardous waste, or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who shall meet the requirements Section R315-264-147 may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in Subsections R315-264-147(b)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-264-147(b).

(i) Each insurance policy shall be amended by attachment of the Hazardous Waste Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-264-151(i). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-264-151(j). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by a Director, the owner or operator shall provide a signed duplicate original of the insurance policy. An owner or operator of a new facility shall submit the signed duplicate original of the Hazardous Waste Facility Liability Endorsement or the Certificate of Liability Insurance to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal. The insurance shall be effective before this initial receipt of hazardous waste.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) An owner or operator may meet the requirements Section R315-264-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-264-147(f) and (g).

(3) An owner or operator may meet the requirements of Section R315-264-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-264-147(h).

(4) An owner or operator may meet the requirements of Section R315-264-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-264-147(i).

(5) An owner or operator may meet the requirements of Section R315-264-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-264-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amount required by Section R315-264-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-264-147(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A Claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-264-147(b)(1) through (b)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is entered between the owner or operator and third-party

claimant for liability coverage under Subsections R315-264-147(b)(1) through (b)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous waste treatment, storage, or disposal facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-264-147(b)(1) through (b)(6).

(c) Request for variance. If an owner or operator can demonstrate to the satisfaction of the Director that the levels of financial responsibility required by Subsection R315-264-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the Director. The request for a variance shall be submitted to the Director as part of the application under Subsection R315-270-14 for a facility that does not have a permit, or pursuant to the procedures for permit modification under Subsection R315-124-5 for a facility that has a permit. If granted, the variance shall take the form of an adjusted level of required liability coverage, such level to be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Director may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the Director to determine a level of financial responsibility other than that required by Subsection R315-264-147(a) or (b). Any request for a variance for a permitted facility shall be treated as a request for a permit modification under Subsections R315-270-41(a)(5) and R315-124-5.

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by Subsection R315-264-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the Director may adjust the level of financial responsibility required under Subsection R315-264-147(a) or (b) as may be necessary to protect human health and the environment. This adjusted level shall be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection R315-264-147(b). An owner or operator shall furnish to the Director, within a reasonable time, any information which the Director requests to determine whether cause exists for such adjustments of level or type of coverage. Any adjustment of the level or type of coverage for a facility that has a permit shall be treated as a permit modification under Subsections R315-270-41(a)(5) and Section R315-124-5.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Director shall notify the owner or operator in writing that he is no longer required by Section R315-264-147 to maintain liability coverage for that facility, unless the Director has reason to believe that closure has not been in accordance with the approved closure plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-264-147 by demonstrating that he passes a financial test as specified in Subsection R315-264-147(f). To pass this test the owner or operator shall meet the criteria of Subsection R315-264-147(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least $10 million; and

(C) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in Subsection R315-264-147(f)(1) refers to the annual aggregate amounts for which coverage is required under Section R315-264-147(a) and (b).

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-264-151(g). If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by Subsections R315-264-143(f), 145(f); or 40 CFR 265.143(e), and 145(e), which are adopted by reference; and liability coverage, he shall submit the letter specified in Subsection R315-264-151(g) to cover both forms of financial responsibility; a separate letter as specified in Subsection R315-264-151(f) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new facility shall submit the items specified in Subsection R315-264-147(f)(3) to the Director at least 60 days before the date on which hazardous waste is first received for treatment, storage, or disposal.

(5) After the initial submission of items specified in Subsection R315-264-147(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-264-147(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-264-147(f)(1), he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability

coverage as specified in Section R315-264-147. Evidence of liability coverage shall be submitted to the Director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-264-147(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in Section R315-264-147 within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to Subsection R315-264-147(g)(2), an owner or operator may meet the requirements of Section R315-264-147 by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall 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. The guarantor shall meet the requirements for owners or operators in Section R315-264-147(f)(1) through (f)(6). The wording of the guarantee shall be identical to the wording specified in Subsection R315-264-151(h)(2). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-264-147(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(ii) Reserved

(2)(i) In the case of corporations incorporated in the United States, a guarantee may be used to satisfy the requirements Section R315-264-147 only if the Attorneys General or Insurance Commissioners of the State in which the guarantor is incorporated have submitted a written statement to the Director that a guarantee executed as described in Section R315-264-147 and Subsection R315-264-151(h)(2) is a legally valid and enforceable obligation in that State.

(ii) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements Section R315-264-147 only if

(A) the non-U.S. corporation has identified a registered agent for service of process in Utah and in the State in which it has its principal place of business, and

(B) the Attorney General or Insurance Commissioner of the State in which the guarantor corporation has its principal place of business, has submitted a written statement to the Director that a guarantee executed as described in Section R315-264-147 and Subsection R315-264-151(h)(2) is a legally valid and enforceable obligation in that State.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-264-147 by obtaining an irrevocable standby letter of credit that conforms to the requirements of Subsection R315-264-147(h) and submitting a copy of the letter of credit to the Director.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(3) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-264-151(k).

(4) An owner or operator who uses a letter of credit to satisfy the requirements Section R315-264-147 may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(5) The wording of the standby trust fund shall be identical to the wording specified in Subsection R315-264-151(n).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-264-147 by obtaining a surety bond that conforms to the requirements of Subsection R315-264-147(i) and submitting a copy of the bond to the Director.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond shall be identical to the wording specified in Subsection R315-264-151(l).

(4) A surety bond may be used to satisfy the requirements Section R315-264-147 only if the Attorneys General or Insurance Commissioners of the State in which the surety is incorporated has submitted a written statement to the Director that a surety bond executed as described in Section R315-264-147 and Subsection R315-264-151(l) is a legally valid and enforceable obligation in that State.

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-264-147 by establishing a trust fund that conforms to the requirements of Subsection R315-264-147(j) and submitting an originally signed duplicate of the trust agreement to the Director.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of Section R315-264-147. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in Section R315-264-147 to cover the difference. For purposes of Subsection R315-264-147(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by Section R315-264-147, less the amount of financial assurance for liability coverage that is being provided by

other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund shall be identical to the wording specified in Subsection R315-264-151(m).

(k) Notwithstanding any other provision of Rule R315-264, an owner or operator using liability insurance to satisfy the requirements of Section R315-264-147 may use, until October 16, 1982, a Hazardous Waste Facility Liability Endorsement or Certificate of Liability Insurance that does not certify that the insurer is licensed to transact the business of insurance, or eligible as an excess or surplus lines insurer, in one or more States.

R315-264-148. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator shall notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11, Bankruptcy, U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in Subsections R315-264-143(f) and 145(f) shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee, Subsection R315-264-151(h).

(b) An owner or operator who fulfills the requirements of Sections R315-264-143, 145, or 147 by obtaining a trust fund, surety bond, letter of credit, or insurance policy shall be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event

R315-264-151. Wording of the Instruments.

(a)(1) A trust agreement for a trust fund, as specified in Subsection R315-264-143(a) or Subsection R315-264-145(a) or 40 CFR 265.143(a) or 145(a), which are adopted by reference; shall be worded as follows, except that instructions in parentheses,(), are to be replaced with the relevant information and the parentheses deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Utah Waste Management and Radiation Control Board has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "Board", "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(d) The term "Director" means the Director, of the Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Director of the Utah Division of Waste Management and Radiation Control. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Director.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Director from the Fund for closure and post-closure expenditures in such amounts as the Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions Section R315-264-151. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Director and the appropriate Regional Administrator(s), by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided

in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Utah.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-264-151(a)(1) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(2) The following is an example of the certification of acknowledgment which shall accompany the trust agreement for a trust fund as specified in Subsections R315-264-143(a) and 145(a) or 40 CFR 265.143(a) or 145(a), which is adopted by reference. State requirements may differ on the proper content of this acknowledgment.

State of

County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(b) A surety bond guaranteeing payment into a trust fund, as specified in Subsection R315-264-143(b) or 145(b) or 40 CFR 265.143(b) or 145(b), which are adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Financial Guarantee Bond

Date bond executed:

Effective date:

Principal: (legal name and business address of owner or operator)

Type of Organization: (insert "individual," "joint venture," "partnership," or "corporation")

State of incorporation:

Surety(ies): (name(s) and business address(es))

EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately):

Total penal sum of bond: $

Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Director of the Utah Division of Waste Management and Radiation Control (hereinafter called Director), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Utah Solid and Hazardous Waste Act (the Act), to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by an the Director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in Sections R315-264-140 through 148 or 40 CFR 265.140 through 148, which are adopted by reference; as applicable, and obtain the Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an the Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the

Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-264-151(b) as such regulations were constituted on the date this bond was executed.

Principal
(Signature(s))
(Name(s))
(Title(s))
(Corporate seal)
Corporate Surety(ies)
(Name and address)
State of incorporation:
Liability limit: $
(Signature(s))
(Name(s) and title(s))
(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in Subsection R315-264-143(c) or 145(c), shall be worded as follows, except that the instructions in parentheses,(), are to be replaced with the relevant information and the parentheses deleted:

Performance Bond
Date bond executed:
Effective date:
Principal: (legal name and business address of owner or operator)
Type of organization: (insert "individual," "joint venture," "partnership," or "corporation")
State of incorporation:
Surety(ies): (name(s) and business address(es))
EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately): _____
Total penal sum of bond: $
Surety's bond number:

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Director of the Utah Division of Waste Management and Radiation Control (hereinafter called Director), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Utah Solid and Hazardous Waste Act (the Act), to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in Sections R315-264-140 through 148, and obtain the Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Director from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an Director that the Principal has been found in violation of the closure requirements of Rule R315-264, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the Director.

Upon notification by the Director that the Principal has been found in violation of the post-closure requirements of Rule R315-264 for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the Director.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance as specified in Sections 315-264-140 through 148, and obtain written approval of such assurance from the Director during the 90 days following receipt by both the Principal and the Director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Director.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such

amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Director and the appropriate Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Director, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Subsection R315-264-151(c) as such regulation was constituted on the date this bond was executed.

Principal
(Signature(s))
(Name(s))
(Title(s))
(Corporate seal)
Corporate Surety(ies)
(Name and address)
State of incorporation:
Liability limit: $
(Signature(s))
(Name(s) and title(s))
(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $

(d) A letter of credit, as specified in Subsection R315-264-143(d) or 145(d) or 40 CFR 265.143(c) or 145(c), which are adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit

Director of the Division of Waste Management and Radiation Control
195 North 1950 West
P.O. Box 144880
Salt Lake City, UT 84114-4880

Dear Director: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of (owner's or operator's name and address) up to the aggregate amount of (in words) U.S. dollars $___, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. ___, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Utah Solid and Hazardous Waste Act."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Director and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of (owner's or operator's name) in accordance with the Director's instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-264-151(d) as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution) (Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(e) A certificate of insurance, as specified in Subsection R315-264-143(e) or 145(e) or 40 CFR 265.143(d) or 145(d), which are adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Certificate of Insurance for Closure or Post-Closure Care
Name and Address of Insurer
(herein called the "Insurer"):
Name and Address of Insured
(herein called the "Insured"):

Facilities Covered: (List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered shall total the face amount shown below).)

Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for (insert "closure" or "closure and post-closure care" or "post-closure care") for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of Subsections R315-264-143(e), or 145(e), or 40 CFR 265.143(d), and 145(d), which are adopted by reference, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control, the Insurer agrees to furnish to the Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in Subsection R315-264-151(e) as such regulations were constituted on the date shown immediately below.

(Authorized signature for Insurer)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(Date)

(f) A letter from the chief financial officer, as specified in Subsection R315-264-143(f) or 145(f), or 40 CFR 265.143(e) or 145(e), which are adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Letter From Chief Financial Officer

Director, Utah Division of Waste Management and Radiation Control.

195 North 1950 West

P.O. Box 144880

Salt Lake City, UT 84114-4880

I am the chief financial officer of (name and address of firm). This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference.

(Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care).

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter).

3. In other jurisdictions, and states where the Director is not authorized to administer the financial requirements of R315-264-140 through 151 or 40 CFR 265.140 through 148, which are adopted by reference, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: ____.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of Subsection R315-264-143(f)(1)(i) or Subsection R315-264-145(f)(1)(i), or 40 CFR 265.143(e)(1)(i) or 145(e)(1)(i), which are adopted by reference, are used. Fill in Alternative II if the criteria of Subsection R315-264-143(f)(1)(ii) or 40 CFR 265.143(e)(1)(ii) or 145(e)(1)(ii) or 145(f)(1)(ii), which are adopted by reference, are used.)

Alternative I

1. Sum of current closure and post-closure cost estimate (total of all cost estimates shown in the five paragraphs above) $____

*2. Total liabilities (if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4)$____

*3. Tangible net worth $____

*4. Net worth $____

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital (line 5 minus line 6) $____

*8. The sum of net income plus depreciation, depletion, and amortization $____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____

12. Is line 7 at least 6 times line 1? (Yes/No) ____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No)____

14. Is line 9 at least 6 times line 1? (Yes/No) ____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates shown in the five paragraphs above) $____

2. Current bond rating of most recent issuance of this firm and name of rating service ____

3. Date of issuance of bond ____

4. Date of maturity of bond ____

*5. Tangible net worth (if any portion of the closure and

post-closure cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line) $____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

7. Is line 5 at least $10 million ? (Yes/No) ____

8. Is line 5 at least 6 times line 1? (Yes/No) ____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____

10. Is line 6 at least 6 times line 1? (Yes/No) ____

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-264-151(f) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(g) A letter from the chief financial officer, as specified in Subsection R315-264-147(f) or 40 CFR 265.147(f), which is adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted.

Letter From Chief Financial Officer

Director, Utah Division of Waste Management and Radiation Control.

195 North 1950 West

P.O. Box 144880

Salt Lake City, UT 84114-4880

I am the chief financial officer of (firm's name and address). This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage (insert "and closure and/or post-closure care" if applicable) as specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference.

(Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address).

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences is being demonstrated through the financial test specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference:____

The firm identified above guarantees, through the guarantee specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference, liability coverage for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences at the following facilities owned or operated by the following: ____. The firm identified above is (insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____). (Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.)

(If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.)

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: ____.

2. The firm identified above guarantees, through the guarantee specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: ____.

3. In other jurisdictions, and states where the Director is not authorized to administer the financial requirements of R315-264-140 through 151 or 40 CFR 265.140 through 148, which are adopted by reference, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference. The current closure or post-closure cost estimates covered by such a test are shown for each facility: ____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in Sections R315-264-140 through 148 and 40 CFR 265.140 through 148, which are adopted by reference, or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR 144 and is assured through a financial test. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:____.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

Part A. Liability Coverage for Accidental Occurrences

(Fill in Alternative I if the criteria of Subsection R315-264-147(f)(1)(i) or 40 CFR 265.147(f)(1)(i), which is adopted by reference, are used. Fill in Alternative II if the criteria of Subsection R315-264-147(f)(1)(ii) or 40 CFR 265.147(f)(1)(ii), which is adopted by reference, are used.)

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____.

*2. Current assets $____.

*3. Current liabilities $____.

4. Net working capital (line 2 minus line 3) $____.

*5. Tangible net worth $____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 4 at least 6 times line 1? (Yes/No) ____.

9. Is line 5 at least 6 times line 1? (Yes/No) ____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____.

2. Current bond rating of most recent issuance and name of rating service ____ ____.

3. Date of issuance of bond _____.

4. Date of maturity of bond _____.

*5. Tangible net worth $____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 5 at least 6 times line 1? ____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) ____.

10. Is line 6 at least 6 times line 1? ____.

(Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.)

Part B. Closure or Post-Closure Care and Liability Coverage

(Fill in Alternative I if the criteria of Subsection R315-264-143(f)(1)(i) or Subsection R315-264-145(f)(1)(i) and of Subsection R315-264-147(f)(1)(i) are used or if the criteria of 40 CFR 265.143(e)(1)(i) or 145(e)(1)(i), which are adopted by reference, and of 40 CFR 265.147(f)(1)(i), which is adopted by reference, are used. Fill in Alternative II if the criteria of Subsection R315-264-143(f)(1)(ii) or Subsection R315-264-145(f)(1)(ii) and of Subsection R315-264-147(f)(1)(ii) are used or if the criteria of 40 CFR 265.143(e)(1)(i) or 145(e)(1)(i), which are adopted by reference, and of 40 CFR 265.147(f)(1)(ii), which is adopted by reference, are used.)

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____

*5. Tangible net worth $____

*6. Net worth $____

*7. Current assets $____

*8. Current liabilities $____

9. Net working capital (line 7 minus line 8) $____

*10. The sum of net income plus depreciation, depletion, and amortization $____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

4. Current bond rating of most recent issuance and name of rating service ____ ____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in Subsection R315-264-151(g) as such regulations were constituted on the date shown immediately below.

(Signature)

(Name)

(Title)

(Date)

(h)(1) A corporate guarantee, as specified in Subsection R315-264-143(f) or 145(f), or 40 CFR 265.143(e) or 145(e), which are adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Corporate Guarantee for Closure or Post-Closure Care

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of the State of (insert name of State), herein referred to as guarantor. This guarantee is made on behalf of the (owner or operator) of (business address), which is (one of the following: "our subsidiary"; "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in (either Subsection R315-264-141(h) or 40 CFR 265.141(h), which is adopted by reference,)" to the Director of the Utah Division of Waste Management and Radiation Control (Director).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsections R315-264-143(f) and 145(f) or 40 CFR 265.143(e) and 145(e), which are adopted by reference.

2. (Owner or operator) owns or operates the following hazardous waste management facility(ies) covered by this guarantee: (List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.)

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Sections R315-264-110 through 120 and 40 CFR 265.110 through 120, which are adopted by reference, for the closure and post-closure care of facilities as identified above.

4. For value received from (owner or operator), guarantor guarantees to the Director that in the event that (owner or operator) fails to perform (insert "closure," "post-closure care" or "closure and post-closure care") of the above

facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in Sections R315-264-140 through 148 or 40 CFR 265.140 through 148, which are adopted by reference, as applicable, in the name of (owner or operator) in the amount of the current closure or post-closure cost estimates as specified in Sections R315-264-140 through 148 or 40 CFR 265.140 through 148, which are adopted by reference.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) that he intends to provide alternate financial assurance as specified in Sections R315-264-140 through 148 or 40 CFR 265.140 through 148, which are adopted by reference, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director and the appropriate Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11, Bankruptcy, U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in Sections R315-264-140 through 148 or 40 CFR 265.140 through 148, which are adopted by reference, as applicable, in the name of (owner or operator) unless (owner or operator) has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification or alteration of an obligation of the owner or operator pursuant to Rules R315-264 or 265.

9. Guarantor agrees to remain bound under this guarantee for as long as (owner or operator) shall comply with the applicable financial assurance requirements of Sections R315-264-140 through 148 or 40 CFR 265.140 through 148, which are adopted by reference, for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

Guarantor may terminate this guarantee by sending notice by certified mail to the Director and to (owner or operator)and to the appropriate Regional Administrator, provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate closure and/or post-closure care coverage complying with Sections R315-264-143 and/or 264-145, or 40 CFR 265.143, and/or 145, which are adopted by reference.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator)

Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in Sections R315-264-140 through 148 or 40 CFR 265.140 through 148, which are adopted by reference, as applicable, and obtain written approval of such assurance from the Director within 90 days after a notice of cancellation by the guarantor is received by the Director from guarantor, guarantor shall provide such alternate financial assurance in the name of (owner or operator).

12. Guarantor expressly waives notice of acceptance of this guarantee by the Director or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in Subsection R315-264-151(h) as such regulations were constituted on the date first above written.

Effective date:

(Name of guarantor)

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(2) A guarantee, as specified in Subsection R315-264-147(g) or 40 CFR 265.147(g), which is adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Guarantee for Liability Coverage

Guarantee made this (date) by (name of guaranteeing entity), a business corporation organized under the laws of (if incorporated within the United States insert "the State of ____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business), herein referred to as guarantor. This guarantee is made on behalf of (owner or operator) of (business address), which is one of the following: "our subsidiary;" "a subsidiary of (name and address of common parent corporation), of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in (either Subsection R315-264-141(h) or 40 CFR 265.141(h), which is adopted by reference,)", to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in Subsection R315-264-147(g) and 40 CFR 265.147(g), which is adopted by reference.

2. (Owner or operator) owns or operates the following hazardous waste management facility(ies) covered by this guarantee: (List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.) This corporate guarantee satisfies the third-party liability requirements for (insert "sudden" or "nonsudden" or "both sudden and nonsudden") accidental occurrences in above-named owner or operator facilities for coverage in the amount of (insert dollar amount) for each occurrence and (insert dollar amount) annual aggregate.

3. For value received from (owner or operator), guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by (sudden and/or nonsudden) accidental occurrences

arising from operations of the facility(ies) covered by this guarantee that in the event that (owner or operator) fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by (sudden and/or nonsudden) accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor shall satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert owner or operator) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert owner or operator) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert owner or operator) arising from, and in the course of, employment by (insert owner or operator); or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert owner or operator). This exclusion applies:

(A) Whether (insert owner or operator) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert owner or operator);

(2) Premises that are sold, given away or abandoned by (insert owner or operator) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert owner or operator);

(4) Personal property in the care, custody or control of (insert owner or operator);

(5) That particular part of real property on which (insert owner or operator) or any contractors or subcontractors working directly or indirectly on behalf of (insert owner or operator) are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the Director and to (owner or operator) and to the appropriate Regional Administrator that he intends to provide alternate liability coverage as specified in Section R315-264-147 and 40 CFR 265.147, which is adopted by reference, as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless (owner or operator) has done so.

6. The guarantor agrees to notify the Director and the appropriate Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11, Bankruptcy, U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in Section R315-264-147 or 40 CFR 265.147, which is adopted by reference, in the name of (owner or operator), unless (owner or operator) has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by Section R315-264-147 and 40 CFR 265.147, which is adopted by reference, provided that such modification shall become effective only if the Director does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) shall comply with the applicable requirements of Sections R315-264-147 and 40 CFR 265.147, which is adopted by reference, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. (Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator):

Guarantor may terminate this guarantee by sending notice by certified mail to the Director and to (owner or operator) and to the appropriate Regional Administrator, provided that this guarantee may not be terminated unless and until (the owner or operator) obtains, and the Director approves, alternate liability coverage complying with Sections R315-264-147 and/or 40 CFR 265.147, which is adopted by reference.

(Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator):

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the Director and by (the owner or operator).

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Principal) and (insert name and address of third-party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Principal's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of $.

(Signatures)
Principal
(Notary) Date
(Signatures)
Claimant(s)
(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with

another mechanism to meet liability requirements, this guarantee shall be considered (insert "primary" or "excess") coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in Subsection R315-264-151(h)(2) as such regulations were constituted on the date shown immediately below.

Effective date:

(Name of guarantor)

(Authorized signature for guarantor)

(Name of person signing)

(Title of person signing)

Signature of witness or notary:

(i) A hazardous waste facility liability endorsement as required in Section R315-264-147 or 40 CFR 265.147, which is adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Hazardous Waste Facility Liability Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under Sections R315-264-147 or 40 CFR 265.147, which is adopted by reference. The coverage applies at (list EPA Identification Number, name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subsections R315-264-147(f) or 40 CFR 265.147(f), which is adopted by reference.

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control (Director), the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director and by the appropriate Regional Administrator.

(e) Any other termination of this endorsement shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director.

Attached to and forming part of policy No. ___ issued by (name of Insurer), herein called the Insurer, of (address of Insurer) to (name of insured) of (address) this _____ day of _____, 19__. The effective date of said policy is _____ day of _____, 19__.

I hereby certify that the wording of this endorsement is identical to the wording specified in Subsection R315-264-151(i) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of Authorized Representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(j) A certificate of liability insurance as required in Section R315-264-147 or 40 CFR 265.147, which is adopted by reference, shall be worded as follows, except that the instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Hazardous Waste Facility Certificate of Liability Insurance

1. (Name of Insurer), (the "Insurer"), of (address of Insurer) hereby certifies that it has issued liability insurance covering bodily injury and property damage to (name of insured), (the "insured"), of (address of insured) in connection with the insured's obligation to demonstrate financial responsibility under Sections R315-264-147 or 40 CFR 265.147, which is adopted by reference. The coverage applies at (list EPA Identification Number, name, and address for each facility) for (insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both). The limits of liability are (insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability), exclusive of legal defense costs. The coverage is provided under policy number ___, issued on (date). The effective date of said policy is (date).

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in Subsection R315-264-147(f) or 40 CFR 265.147(f), which is adopted by reference.

(c) Whenever requested by the Director of the Utah Division of Waste Management and Radiation Control, the Insurer agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, shall be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director and by the appropriate Regional Administrator.

(e) Any other termination of the insurance shall be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written

notice is received by the Director.

I hereby certify that the wording of this instrument is identical to the wording specified in Subsection R315-264-151(j) as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(Signature of authorized representative of Insurer)

(Type name)

(Title), Authorized Representative of (name of Insurer)

(Address of Representative)

(k) A letter of credit, as specified in Subsection R315-264-147(h) or 40 CFR 265.147(h), which is adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Irrevocable Standby Letter of Credit

Director, Utah Division of Waste Management and Radiation Control

195 North 1950 West

P.O. Box 144880

Salt Lake City, UT 84114-4880

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ("any and all third-party liability claimants" or insert name of trustee of the standby trust fund), at the request and for the account of (owner or operator's name and address) for third-party liability awards or settlements up to (in words) U.S. dollars $_____ per occurrence and the annual aggregate amount of (in words) U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of (in words) U.S. dollars $_____ per occurrence, and the annual aggregate amount of (in words) U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and (insert the following language if the letter of credit is being used without a standby trust fund: (1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties (insert principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operations of (principal's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of $( ). We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert principal) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal).

This exclusion applies:

(A) Whether (insert principal) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert principal);

(2) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert principal);

(4) Personal property in the care, custody or control of (insert principal);

(5) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of these operations.

(Signatures)

Grantor

(Signatures)

Claimant(s) or

(2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.)

This letter of credit is effective as of (date) and shall expire on (date at least one year later), but such expiration date shall be automatically extended for a period of (at least one year) on (date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the Director of the Utah Division of Waste Management and Radiation Control, and (owner's or operator's name) and the appropriate Regional Administrator by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

(Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered (insert "primary" or "excess" coverage)."

We certify that the wording of this letter of credit is identical to the wording specified in Subsection R315-264-151(k) as such regulations were constituted on the date shown immediately below. (Signature(s) and title(s) of official(s) of issuing institution) (Date).

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code").

(l) A surety bond, as specified in Subsection R315-264-147(i) or 40 CFR 265.147(i), which is adopted by reference, shall be worded as follows: except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Payment Bond

Surety Bond No. (Insert number)

Parties (Insert name and address of owner or operator), Principal, incorporated in (Insert State of incorporation) of (Insert city and State of principal place of business) and (Insert name and address of surety company(ies)), Surety Company(ies), of (Insert surety(ies) place of business).

EPA Identification Number, name, and address for each facility guaranteed by this bond: ____

Table

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence	(insert amount)	(insert amount)
Annual Aggregate	(insert amount)	(insert amount)

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended.

(2) Rules adopted by the Utah Waste Management and Radiation Control Board under the Utah Solid and Hazardous Waste Act, particularly ("Subsection R315-264-147" or "40 CFR 265.147, which is adopted by reference,") (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ("sudden" and/or "nonsudden") accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which (insert principal) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert principal) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert principal) under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of (insert principal) arising from, and in the course of, employment by (insert principal); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert principal). This exclusion applies:

(A) Whether (insert principal) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert principal);

(2) Premises that are sold, given away or abandoned by (insert principal) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert principal);

(4) Personal property in the care, custody or control of (insert principal);

(5) That particular part of real property on which (insert principal) or any contractors or subcontractors working directly or indirectly on behalf of (insert principal) are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal shall satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert name of Principal) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Principal's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of $( ).

(Signature)

Principal

(Notary) Date

(Signature(s))

Claimant(s)

(Notary) Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond shall be considered (insert "primary" or "excess") coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the Director forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Director and the appropriate Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the Director, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the Director.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from (insert date) (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in

Subsection R315-264-151(1), as such regulations were constituted on the date this bond was executed.

PRINCIPAL
(Signature(s))
(Name(s))
(Title(s))
(Corporate Seal)
CORPORATE SURETY(IES)
(Name and address)
State of incorporation:
Liability Limit: $
(Signature(s))
(Name(s) and title(s))
(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $

(m)(1) A trust agreement, as specified in Subsection R315-264-147(j) or 40 CFR 265.147(j), which is adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator) a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert, "incorporated in the State of ____" or "a national bank"), the "trustee."

Whereas, the Utah Waste Management and Radiation Control Board, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Board", "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(b) The term "Director" means the Director,of the Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

(c) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ (up to $1 million) per occurrence and _____ (up to $2 million) annual aggregate for sudden accidental occurrences and _____ (up to $3 million) per occurrence and _____ (up to $6 million) annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from, and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Grantor).

This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned to (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by Director.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that

instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Grantor's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of $( ).

(Signatures)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions Section R315-264-151. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the

appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equalling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director and to the appropriate Regional Administrator.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Utah.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-264-151(m) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)

(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a trust fund as specified in Subsection R315-264-147(j) or 40 CFR 265.147(j), which is adopted by reference.

State of

County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(n)(1) A standby trust agreement, as specified in Subsection R315-264-147(h) or 40 CFR 265.147(h), which is adopted by reference, shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Standby Trust Agreement

Trust Agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator) a (name of a State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert, "incorporated in the State of _____" or "a national bank"), the "trustee."

Whereas the Utah Waste Management and Radiation Control Board, in accordance with the Utah Solid and Hazardous Waste Act, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this

agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Board", "Waste Management and Radiation Control Board" created pursuant to Utah Code Annotated 19-1-106.

(b) The term "Director" means the Director,of the Division of Waste Management and Radiation Control his successors, designees, and any subsequent entity of the State of Utah upon whom the duties of regulation and enforcement of regulations governing hazardous waste.

(c) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(d) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A (on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by (sudden and/or nonsudden) accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ (up to $1 million) per occurrence and _____ (up to $2 million) annual aggregate for sudden accidental occurrences and _____ (up to $3 million) per occurrence and _____ (up to $6 million) annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which (insert Grantor) is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that (insert Grantor) would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of (insert Grantor) under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of (insert Grantor) arising from , and in the course of, employment by (insert Grantor); or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by (insert Grantor).

This exclusion applies:

(A) Whether (insert Grantor) may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by (insert Grantor);

(2) Premises that are sold, given away or abandoned by (insert Grantor) if the property damage arises out of any part of those premises;

(3) Property loaned by (insert Grantor);

(4) Personal property in the care, custody or control of (insert Grantor);

(5) That particular part of real property on which (insert Grantor) or any contractors or subcontractors working directly or indirectly on behalf of (insert Grantor) are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered (insert "primary" or "excess") coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Director of the Utah Division of Waste Management and Radiation Control.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification shall be worded as follows, except that instructions in parentheses, (), are to be replaced with the relevant information and the parentheses deleted:

Certification of Valid Claim

The undersigned, as parties (insert Grantor) and (insert name and address of third party claimant(s)), hereby certify that the claim of bodily injury and/or property damage caused by a (sudden or nonsudden) accidental occurrence arising from operating (Grantor's) hazardous waste treatment, storage, or disposal facility should be paid in the amount of $( ).

(Signature)

Grantor

(Signatures)

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of Subsection R315-264-151(k) and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions Section R315-264-151. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940,

as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director, or by the Trustee and the Director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor.

The Director shall agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in this section.

Section 16. Immunity and indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws

of the State of Utah.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Subsection R315-264-151(n) as such regulations were constituted on the date first above written.

(Signature of Grantor)
(Title)
Attest:
(Title)
(Seal)
(Signature of Trustee)
Attest:
(Title)
(Seal)

(2) The following is an example of the certification of acknowledgement which shall accompany the trust agreement for a standby trust fund as specified in Subsection R315-264-147(h) or 40 CFR 265.147(h) , which is adopted by reference.

State of
County of

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

R315-264-170. Use and Management of Containers -- Applicability.

The regulations in Sections R315-264-170 through 179 apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as Section R315-264-1 provides otherwise.

Under Section R315-261-7 and Subsection R315-261-33(c), 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 Section R315-261-7. In that event, management of the container is exempt from the requirements of Sections R315-264-170 through 179.

R315-264-171. 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 Rule R315-264.

R315-264-172. 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.

R315-264-173. 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.

Comment: Reuse of containers in transportation is governed by U.S. Department of Transportation regulations including those set forth in 49 CFR 173.28.

R315-264-174. Inspections.

At least weekly, the owner or operator shall inspect areas where containers are stored. The owner or operator shall look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

See Subsection R315-264-15(c) and Section R315-264-171 for remedial action required if deterioration or leaks are detected.

R315-264-175. Containment.

(a) Container storage areas shall have a containment system that is designed and operated in accordance with Subsection R315-264-175(b), except as otherwise provided by Subsection R315-264-175(c).

(b) A containment system shall be designed and operated as follows:

(1) A base shall underlie 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 Subsection R315-264-175(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 Rule R315-261, it shall be managed as a hazardous waste in accordance with all applicable requirements of Rules R315-262 through 266. 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 Subsection R315-264-175(b), except as provided by Subsection R315-264-175(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 Subsection R315-264-175(b):

(1) F020, F021, F022, F023, F026 and F027.

R315-264-176. 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 Subsection R315-264-17(a) for additional requirements.

R315-264-177. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials, see appendix V of Rule R315-264 for examples, shall not be placed in the same container, unless Subsection R35-264-17(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 Section R315-264-13, the waste analysis plan shall include analyses needed to comply with Section R315-264-177. Also, Subsection R315-264-17(c) requires wastes analyses, trial tests or other documentation to assure compliance with Subsection R315-264-17(b). As required by Section R315-264-73, 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 Section R315-264-177 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.

R315-264-178. 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 Subsection R315-261-3(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 Rules R315-262 through 266.

R315-264-179. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of Sections R315-264-1030 through 1036, 1050 through 1065, and 1080 through 1090.

R315-264-190. Tank Systems - Applicability.

The requirements of Sections R315-264-190 through 200 apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in Subsections R315-264-190(a), (b), and (c) or in Section R315-264-1.

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in Section R315-264-193. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test shall be used: Method 9095B, Paint Filter Liquids Test, as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in R315-260-11.

(b) Tank systems, including sumps, as defined in Section R315-260-10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in Subsection R315-264-193(a).

(c) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in Section R315-260-10 and regulated under Sections R315-264-570 through 575, shall meet the requirements of Sections R315-264-190 through 200.

R315-264-191. Assessment of Existing Tank System's Integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of Section R315-264-193, the owner or operator shall determine that the tank system is not leaking or is unfit for use. Except as provided in Subsection R315-264-191(c), the owner or operator shall obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with Subsection R315-270-11(d), that attests to the tank system's integrity.

(b) This assessment shall determine that the tank system is adequately designed and has sufficient structural strength and compatibility with the waste(s) to be stored or treated, to ensure that it will not collapse, rupture, or fail. At a minimum, this assessment shall consider the following:

(1) Design standard(s), if available, according to which the tank and ancillary equipment were constructed;

(2) Hazardous characteristics of the waste(s) that have been and will be handled;

(3) Existing corrosion protection measures;

(4) Documented age of the tank system, if available (otherwise, an estimate of the age); and

(5) Results of a leak test, internal inspection, or other tank integrity examination such that:

(i) For non-enterable underground tanks, the assessment shall include a leak test that is capable of taking into account the effects of temperature variations, tank end deflection, vapor pockets, and high water table effects, and

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment shall include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer in accordance with Subsection R315-270-11(d), that addresses cracks, leaks, corrosion, and erosion.

Note: The practices described in the American Petroleum Institute (API) Publication, Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines in conducting other than a leak test.

(c) Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

(d) If, as a result of the assessment conducted in accordance with Subsection R315-264-191(a), a tank system is found to be leaking or unfit for use, the owner or operator shall comply with the requirements of Section R315-264-196.

R315-264-192. Design and Installation of New Tank Systems or Components.

(a) Owners or operators of new tank systems or

components shall obtain and submit to the Director, at time of submittal of part B information, a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with Subsection R315-270-11(d), attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment shall show that the foundation, structural support, seams, connections, and pressure controls, if applicable, are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which shall be used by the Director to review and approve or disapprove the acceptability of the tank system design, shall include, at a minimum, the following information:

(1) Design standard(s) according to which tank(s) and/or the ancillary equipment are constructed;

(2) Hazardous characteristics of the waste(s) to be handled;

(3) For new tank systems or components in which the external shell of a metal tank or any external metal component of the tank system will be in contact with the soil or with water, a determination by a corrosion expert of:

(i) Factors affecting the potential for corrosion, including but not limited to:

(A) Soil moisture content;

(B) Soil pH;

(C) Soil sulfides level;

(D) Soil resistivity;

(E) Structure to soil potential;

(F) Influence of nearby underground metal structures, e.g., piping;

(G) Existence of stray electric current;

(H) Existing corrosion-protection measures, e.g., coating, cathodic protection, and

(ii) The type and degree of external corrosion protection that are needed to ensure the integrity of the tank system during the use of the tank system or component, consisting of one or more of the following:

(A) Corrosion-resistant materials of construction such as special alloys, fiberglass reinforced plastic, etc.;

(B) Corrosion-resistant coating, such as epoxy, fiberglass, etc., with cathodic protection, e.g., impressed current or sacrificial anodes; and

(C) Electrical isolation devices such as insulating joints, flanges, etc.

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)-Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in providing corrosion protection for tank systems.

(4) For underground tank system components that are likely to be adversely affected by vehicular traffic, a determination of design or operational measures that will protect the tank system against potential damage; and

(5) Design considerations to ensure that:

(i) Tank foundations will maintain the load of a full tank;

(ii) Tank systems shall be anchored to prevent flotation or dislodgment where the tank system is placed in a saturated zone, or is located within a seismic fault zone subject to the standards of Subsection R315-264-18(a); and

(iii) Tank systems shall withstand the effects of frost heave.

(b) The owner or operator of a new tank system shall ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified, installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, shall inspect the system for the presence of any of the following items:

(1) Weld breaks;

(2) Punctures;

(3) Scrapes of protective coatings;

(4) Cracks;

(5) Corrosion;

(6) Other structural damage or inadequate construction/installation. All discrepancies shall be remedied before the tank system is covered, enclosed, or placed in use.

(c) New tank systems or components that are placed underground and that are backfilled shall be provided with a backfill material that is a noncorrosive, porous, homogeneous substance and that is installed so that the backfill is placed completely around the tank and compacted to ensure that the tank and piping are fully and uniformly supported.

(d) All new tanks and ancillary equipment shall be tested for tightness prior to being covered, enclosed, or placed in use. If a tank system is found not to be tight, all repairs necessary to remedy the leak(s) in the system shall be performed prior to the tank system being covered, enclosed, or placed into use.

(e) Ancillary equipment shall be supported and protected against physical damage and excessive stress due to settlement, vibration, expansion, or contraction.

Note: The piping system installation procedures described in American Petroleum Institute (API) Publication 1615 (November 1979), "Installation of Underground Petroleum Storage Systems," or ANSI Standard B31.3, "Petroleum Refinery Piping," and ANSI Standard B31.4 "Liquid Petroleum Transportation Piping System," may be used, where applicable, as guidelines for proper installation of piping systems.

(f) The owner or operator shall provide the type and degree of corrosion protection recommended by an independent corrosion expert, based on the information provided under Subsection R315-264-192(a)(3), or other corrosion protection if the Director believes other corrosion protection is necessary to ensure the integrity of the tank system during use of the tank system. The installation of a corrosion protection system that is field fabricated shall be supervised by an independent corrosion expert to ensure proper installation.

(g) The owner or operator shall obtain and keep on file at the facility written statements by those persons required to certify the design of the tank system and supervise the installation of the tank system in accordance with the requirements of Subsections R315-264-192(b) through (f), that attest that the tank system was properly designed and installed and that repairs, pursuant to Subsections R315-264-192(b) and (d), were performed. These written statements shall also include the certification statement as required in Subsection R315-270-11(d).

R315-264-193. Containment and Detection of Releases.

(a) In order to prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of Section R315-264-193 shall be provided, except as provided in Subsections R315-264-193(f) and (g):

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

(b) Secondary containment systems shall be:

(1) Designed, installed, and operated to prevent any migration of wastes or accumulated liquid out of the system to the soil, ground water, or surface water at any time during the use of the tank system; and

(2) Capable of detecting and collecting releases and accumulated liquids until the collected material is removed.

(c) To meet the requirements of Subsection R315-264-193(b), secondary containment systems shall be at a minimum:

(1) Constructed of or lined with materials that are compatible with the wastes(s) to be placed in the tank system and shall have sufficient strength and thickness to prevent failure owing to pressure gradients, including static head and external hydrological forces, physical contact with the waste to which it is exposed, climatic conditions, and the stress of daily operation, including stresses from nearby vehicular traffic.

(2) Placed on a foundation or base capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift;

(3) Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours, or at the earliest practicable time if the owner or operator can demonstrate to the Director that existing detection technologies or site conditions shall not allow detection of a release within 24 hours; and

(4) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked waste and accumulated precipitation shall be removed from the secondary containment system within 24 hours, or in as timely a manner as is possible to prevent harm to human health and the environment, if the owner or operator can demonstrate to the Director that removal of the released waste or accumulated precipitation cannot be accomplished within 24 hours.

Note: If the collected material is a hazardous waste under Rule R315-261, it is subject to management as a hazardous waste in accordance with all applicable requirements of Rules R315-262 through 265. If the collected material is discharged through a point source to waters of the United States, it is subject to the requirements of sections 301, 304, and 402 of the Clean Water Act, as amended. If discharged to a Publicly Owned Treatment Works (POTW), it is subject to the requirements of section 307 of the Clean Water Act, as amended. If the collected material is released to the environment, it may be subject to the reporting requirements of 40 CFR part 302.

(d) Secondary containment for tanks shall include one or more of the following devices:

(1) A liner, external to the tank;

(2) A vault;

(3) A double-walled tank; or

(4) An equivalent device as approved by the Director.

(e) In addition to the requirements of Subsections R315-264-193(b), (c), and (d), secondary containment systems shall satisfy the following requirements:

(1) External liner systems shall be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event.

(iii) Free of cracks or gaps; and

(iv) Designed and installed to surround the tank completely and to cover all surrounding earth likely to come into contact with the waste if the waste is released from the tank(s), i.e., capable of preventing lateral as well as vertical migration of the waste.

(2) Vault systems shall be:

(i) Designed or operated to contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Designed or operated to prevent run-on or infiltration of precipitation into the secondary containment system unless the collection system has sufficient excess capacity to contain run-on or infiltration. Such additional capacity shall be sufficient to contain precipitation from a 25-year, 24-hour rainfall event;

(iii) Constructed with chemical-resistant water stops in place at all joints, if any;

(iv) Provided with an impermeable interior coating or lining that is compatible with the stored waste and that shall prevent migration of waste into the concrete;

(v) Provided with a means to protect against the formation of and ignition of vapors within the vault, if the waste being stored or treated:

(A) Meets the definition of ignitable waste under Section R315-261-21; or

(B) Meets the definition of reactive waste under Section R315-261-23, and may form an ignitable or explosive vapor; and

(vi) Provided with an exterior moisture barrier or be otherwise designed or operated to prevent migration of moisture into the vault if the vault is subject to hydraulic pressure.

(3) Double-walled tanks shall be:

(i) Designed as an integral structure, i.e., an inner tank completely enveloped within an outer shell, so that any release from the inner tank is contained by the outer shell;

(ii) Protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell; and

(iii) Provided with a built-in continuous leak detection system capable of detecting a release within 24 hours, or at the earliest practicable time, if the owner or operator can demonstrate to the Director, and the Director concludes, that the existing detection technology or site conditions would not allow detection of a release within 24 hours.

Note: The provisions outlined in the Steel Tank Institute's (STI) "Standard for Dual Wall Underground Steel Storage Tanks" may be used as guidelines for aspects of the design of underground steel double-walled tanks.

(f) Ancillary equipment shall be provided with secondary containment, e.g., trench, jacketing, double-walled piping, that meets the requirements of Subsections R315-264-193(b) and (c) except for:

(1) Aboveground piping, exclusive of flanges, joints, valves, and other connections, that are visually inspected for leaks on a daily basis;

(2) Welded flanges, welded joints, and welded connections, that are visually inspected for leaks on a daily basis;

(3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

(4) Pressurized aboveground piping systems with automatic shut-off devices, e.g., excess flow check valves,

flow metering shutdown devices, loss of pressure actuated shut-off devices, that are visually inspected for leaks on a daily basis.

(g) The owner or operator may obtain a variance from the requirements Section R315-264-193 if the Director finds, as a result of a demonstration by the owner or operator that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste or hazardous constituents into the ground water; or surface water at least as effectively as secondary containment during the active life of the tank system or that in the event of a release that does migrate to ground water or surface water, no substantial present or potential hazard will be posed to human health or the environment. New underground tank systems may not, per a demonstration in accordance with Subsection R315-264-193(g)(2), be exempted from the secondary containment requirements Section R315-264-193.

(1) In deciding whether to grant a variance based on a demonstration of equivalent protection of ground water and surface water, the Director shall consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the thickness of soils present between the tank system and ground water; and

(iv) All other factors that would influence the quality and mobility of the hazardous constituents and the potential for them to migrate to ground water or surface water.

(2) In deciding whether to grant a variance based on a demonstration of no substantial present or potential hazard, the Director shall consider:

(i) The potential adverse effects on ground water, surface water, and land quality taking into account:

(A) The physical and chemical characteristics of the waste in the tank system, including its potential for migration,

(B) The hydrogeological characteristics of the facility and surrounding land,

(C) The potential for health risks caused by human exposure to waste constituents,

(D) The potential for damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents, and

(E) The persistence and permanence of the potential adverse effects;

(ii) The potential adverse effects of a release on ground-water quality, taking into account:

(A) The quantity and quality of ground water and the direction of ground-water flow,

(B) The proximity and withdrawal rates of ground-water users,

(C) The current and future uses of ground water in the area, and

(D) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(iii) The potential adverse effects of a release on surface water quality, taking into account:

(A) The quantity and quality of ground water and the direction of ground-water flow,

(B) The patterns of rainfall in the region,

(C) The proximity of the tank system to surface waters,

(D) The current and future uses of surface waters in the area and any water quality standards established for those surface waters, and

(E) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality; and

(iv) The potential adverse effects of a release on the land surrounding the tank system, taking into account:

(A) The patterns of rainfall in the region, and

(B) The current and future uses of the surrounding land.

(3) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of Subsection R315-264-193(g)(1), at which a release of hazardous waste has occurred from the primary tank system but has not migrated beyond the zone of engineering control, as established in the variance, shall:

(i) Comply with the requirements of Section R315-264-196, except Subsection R315-264-193(d), and

(ii) Decontaminate or remove contaminated soil to the extent necessary to:

(A) Enable the tank system for which the variance was granted to resume operation with the capability for the detection of releases at least equivalent to the capability it had prior to the release; and

(B) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water; and

(iii) If contaminated soil cannot be removed or decontaminated in accordance with Subsection R315-264-193(g)(3)(ii), comply with the requirement of Subsection R315-264-197(b).

(4) The owner or operator of a tank system, for which a variance from secondary containment had been granted in accordance with the requirements of Subsection R315-264-193(g)(1), at which a release of hazardous waste has occurred from the primary tank system and has migrated beyond the zone of engineering control,as established in the variance, shall:

(i) Comply with the requirements of Subsections R315-264-196(a), (b), (c), and (d); and

(ii) Prevent the migration of hazardous waste or hazardous constituents to ground water or surface water, if possible, and decontaminate or remove contaminated soil. If contaminated soil cannot be decontaminated or removed or if ground water has been contaminated, the owner or operator shall comply with the requirements of Subsection R315-264-197(b); and

(iii) If repairing, replacing, or reinstalling the tank system, provide secondary containment in accordance with the requirements of Subsections R315-264-193(a) through (f) or reapply for a variance from secondary containment and meet the requirements for new tank systems in Section R315-264-192 if the tank system is replaced. The owner or operator shall comply with these requirements even if contaminated soil can be decontaminated or removed and ground water or surface water has not been contaminated.

(h) The following procedures shall be followed in order to request a variance from secondary containment:

(1) The Director shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in Subsection R315-264-193(g) according to the following schedule:

(i) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with Subsection R315-264-193(a).

(ii) For new tank systems, at least 30 days prior to entering into a contract for installation.

(2) As part of the notification, the owner or operator shall also submit to the Director a description of the steps necessary to conduct the demonstration and a timetable for completing each of the steps. The demonstration shall address each of the factors listed in Subsection R315-264-193(g)(1) or (g)(2);

(3) The demonstration for a variance shall be completed within 180 days after notifying the Director of an intent to

conduct the demonstration; and

(4) If a variance is granted under Subsection R315-264-193(h), the Director shall require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

(i) All tank systems, until such time as secondary containment that meets the requirements Section R315-264-193 is provided, shall comply with the following:

(1) For non-enterable underground tanks, a leak test that meets the requirements of Subsection R315-264-191(b)(5) or other tank integrity method, as approved or required by the Director, shall be conducted at least annually.

(2) For other than non-enterable underground tanks, the owner or operator shall either conduct a leak test as in Subsection R315-264-193(i)(1) or develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified Professional Engineer. The schedule and procedure shall be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator shall remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments shall be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

(3) For ancillary equipment, a leak test or other integrity assessment as approved by the Director shall be conducted at least annually.

Note: The practices described in the American Petroleum Institute (API) Publication Guide for Inspection of Refinery Equipment, Chapter XIII, "Atmospheric and Low-Pressure Storage Tanks," 4th edition, 1981, may be used, where applicable, as guidelines for assessing the overall condition of the tank system.

(4) The owner or operator shall maintain on file at the facility a record of the results of the assessments conducted in accordance with Subsections R315-264-193(i)(1) through (i)(3).

(5) If a tank system or component is found to be leaking or unfit for use as a result of the leak test or assessment in Subsections R315-264-193(i)(1) through (i)(3), the owner or operator shall comply with the requirements of Section R315-264-196.

R315-264-194. General Operating Requirements.

(a) Hazardous wastes or treatment reagents shall not be placed in a tank system if they could cause the tank, its ancillary equipment, or the containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator shall use appropriate controls and practices to prevent spills and overflows from tank or containment systems. These include at a minimum:

(1) Spill prevention controls, e.g., check valves, dry disconnect couplings;

(2) Overfill prevention controls, e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank; and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator shall comply with the requirements of Section R315-264-196 if a leak or spill occurs in the tank system.

R315-264-195. Inspections.

(a) The owner or operator shall develop and follow a schedule and procedure for inspecting overfill controls.

(b) The owner or operator shall inspect at least once each operating day data gathered from monitoring and leak detection equipment, e.g., pressure or temperature gauges, monitoring wells, to ensure that the tank system is being operated according to its design.

Note: Subsection R315-264-15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section R315-264-196 requires the owner or operator to notify the Director within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

(c) In addition, except as noted under Subsection R315-264-195(d), the owner or operator shall inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system, e.g., dikes, to detect erosion or signs of releases of hazardous waste, e.g., wet spots, dead vegetation.

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, shall inspect at least weekly those areas described in Subsections R315-264-195(c)(1) and (c)(2). Use of the alternate inspection schedule shall be documented in the facility's operating record. This documentation shall include a description of the established workplace practices at the facility.

(e) Reserved

(f) Ancillary equipment that is not provided with secondary containment, as described in Subsections R315-264-193(f)(1) through (4), shall be inspected at least once each operating day.

(g) The owner or operator shall inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system shall be confirmed within six months after initial installation and annually thereafter; and

(2) All sources of impressed current shall be inspected and/or tested, as appropriate, at least bimonthly, i.e., every other month.

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)-Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

(h) The owner or operator shall document in the operating record of the facility an inspection of those items in Subsections R315-264-195(a) through (c).

R315-264-196. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, shall be removed from service immediately, and the owner or operator shall satisfy the following requirements:

(a) Cessation of use; prevent flow or addition of wastes. The owner or operator shall immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) Removal of waste from tank system or secondary containment system.

(1) If the release was from the tank system, the owner/operator shall, within 24 hours after detection of the leak or, if the owner/operator demonstrates that it is not possible, at the earliest practicable time, remove as much of the waste as is necessary to prevent further release of hazardous waste to the environment and to allow inspection and repair of the tank system to be performed.

(2) If the material released was to a secondary containment system, all released materials shall be removed within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

(c) Containment of visible releases to the environment. The owner/operator shall immediately conduct a visual inspection of the release and, based upon that inspection:

(1) Prevent further migration of the leak or spill to soils or surface water; and

(2) Remove, and properly dispose of, any visible contamination of the soil or surface water.

(d) Notifications, reports.

(1) Any release to the environment, except as provided in Subsection R315-264-196(d)(2), shall be reported to the Director within 24 hours of its detection. If the release has been reported pursuant to 40 CFR part 302, that report shall satisfy this requirement.

(2) A leak or spill of hazardous waste is exempted from the requirements of Subsection R315-264-196(d) if it is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned up.

(3) Within 30 days of detection of a release to the environment, a report containing the following information shall be submitted to the Director:

(i) Likely route of migration of the release;

(ii) Characteristics of the surrounding soil, soil composition, geology, hydrogeology, climate;

(iii) Results of any monitoring or sampling conducted in connection with the release, if available. If sampling or monitoring data relating to the release are not available within 30 days, these data shall be submitted to the Director as soon as they become available.

(iv) Proximity to downgradient drinking water, surface water, and populated areas; and

(v) Description of response actions taken or planned.

(e) Provision of secondary containment, repair, or closure.

(1) Unless the owner/operator satisfies the requirements of Subsection R315-264-196(e)(2) through (4), the tank system shall be closed in accordance with Section R315-264-197.

(2) If the cause of the release was a spill that has not damaged the integrity of the system, the owner/operator may return the system to service as soon as the released waste is removed and repairs, if necessary, are made.

(3) If the cause of the release was a leak from the primary tank system into the secondary containment system, the system shall be repaired prior to returning the tank system to service.

(4) If the source of the release was a leak to the environment from a component of a tank system without secondary containment, the owner/operator shall provide the component of the system from which the leak occurred with secondary containment that satisfies the requirements of Section R315-264-193 before it can be returned to service, unless the source of the leak is an aboveground portion of a tank system that can be inspected visually. If the source is an aboveground component that can be inspected visually, the component shall be repaired and may be returned to service without secondary containment as long as the requirements of Subsection R315-264-196(f) are satisfied. If a component is replaced to comply with the requirements of Subsection R315-264-196(e)(4), that component shall satisfy the requirements for new tank systems or components in Sections R315-264-192 and 193. Additionally, if a leak has occurred in any portion of a tank system component that is not readily accessible for visual inspection, e.g., the bottom of an inground or onground tank, the entire component shall be provided with secondary containment in accordance with Section R315-264-193 prior to being returned to use.

(f) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with Subsection R315-264-196(e), and the repair has been extensive, e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel, the tank system shall not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with Subsection R315-270-11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification shall be placed in the operating record and maintained until closure of the facility.

Note: The Director may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order requiring corrective action or such other response as deemed necessary to protect human health or the environment.

Note: See Subsection R315-264-15(c) for the requirements necessary to remedy a failure. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of certain releases.

R315-264-197. Closure and Post-Closure Care.

(a) At closure of a tank system, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components, liners, etc., contaminated soils, and structures and equipment contaminated with waste, and manage them as hazardous waste, unless Subsection R315-261-3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for tank systems shall meet all of the requirements specified in Sections R315-264-110 through 120, 140 through 151.

(b) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in Subsection R315-264-197(a), then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, Subsection R315-264-310. In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in Sections R315-264-110 through 120, 140 through 151.

(c) If an owner or operator has a tank system that does not have secondary containment that meets the requirements of Subsections R315-264-193(b) through (f) and has not been granted a variance from the secondary containment requirements in accordance with Subsection R315-264-193(g), then:

(1) The closure plan for the tank system shall include both a plan for complying with Subsection R315-264-197(a) and a contingent plan for complying with Subsection R315-264-197(b).

(2) A contingent post-closure plan for complying with Subsection R315-264-197(b) shall be prepared and submitted as part of the permit application.

(3) The cost estimates calculated for closure and post-

closure care shall reflect the costs of complying with the contingent closure plan and the contingent post-closure plan, if those costs are greater than the costs of complying with the closure plan prepared for the expected closure under Subsection R315-264-197(a).

(4) Financial assurance shall be based on the cost estimates in Subsection R315-264-197(c)(3).

(5) For the purposes of the contingent closure and post-closure plans, such a tank system is considered to be a landfill, and the contingent plans shall meet all of the closure, post-closure, and financial responsibility requirements for landfills under Sections R315-264-110 through 120, 140 through 148, and 151.

R315-264-198. Special Requirements for Ignitable or Reactive Wastes.

(a) Ignitable or reactive waste shall not be placed in tank systems, unless:

(1) The waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(i) The resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under Sections R315-261-21 or 23, and

(ii) Subsection R315-264-17(b) is complied with; or

(2) The waste is stored or treated in such a way that it is protected from any material or conditions that may cause the waste to ignite or react; or

(3) The tank system is used solely for emergencies.

(b) The owner or operator of a facility where ignitable or reactive waste is stored or treated in a tank shall comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjoining property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's "Flammable and Combustible Liquids Code," (1977 or 1981), incorporated by reference, see Section R315-260-11.

R315-264-199. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials, shall not be placed in the same tank system, unless Subsection R315-264-17(b) is complied with.

(b) Hazardous waste shall not be placed in a tank system that has not been decontaminated and that previously held an incompatible waste or material, unless Subsection R315-264-17(b) is complied with.

R315-264-200. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the applicable requirements of Sections R315-264-1030 through 1036, 1050 through 1065 and 1080 through 1090.

R315-264-220. Surface Impoundments -- Applicability.

The regulations in Sections R315-264-220 through 223 and 226 through 232 apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste except as Section R315-264-1 provides otherwise.

R315-264-221. Design and Operating Requirements.

(a) Any surface impoundment that is not covered by Subsection R315-264-221(c) or 40 CFR 265.221, which is adopted by reference, 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 ground water 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 ground water or surface water, during the active life of the facility, provided that the impoundment is closed in accordance with Subsection R315-264-228(a)(1). For impoundments that will be closed in accordance with Subsection R315-264-228(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 shall be exempted from the requirements of Subsection R315-264-221(a) if the Director finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, shall prevent the migration of any hazardous constituents, see Subsection R315-264-93, into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Director shall 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 ground water 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 ground water 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 Section R315-260-10 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 3 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 Subsections R315-264-221(a)(1), (2), and (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 Subsection R315-264-221(c)(2) 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 x 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 x 10^{-4} m^2/sec or more;

(iii) Constructed of materials that are chemically resistant to the waste managed in the surface impoundment and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes and any waste cover materials or equipment used at the surface impoundment;

(iv) Designed and operated to minimize clogging during the active life and post-closure care period; and

(v) Constructed with sumps and liquid removal methods, e.g., pumps, of sufficient size to collect and remove liquids from the sump and prevent liquids from backing up into the drainage layer. Each unit shall have its own sump(s). The design of each sump and removal system shall provide a method for measuring and recording the volume of liquids present in the sump and of liquids removed.

(3) The owner or operator shall collect and remove pumpable liquids in the sumps to minimize the head on the bottom liner.

(4) The owner or operator of a leak detection system that is not located completely above the seasonal high water table shall demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(d) The Director may approve alternative design or operating practices to those specified in Subsection R315-264-221(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 system specified in Subsection R315-264-221(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 Subsection R315-264-221(c) 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 such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristic in Section R315-261-24; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of Subsection R315-264-221(e), 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, ground water, 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 Subsection R315-264-221(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 such impoundment, the owner or operator shall remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including but not limited to ground-water 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 Section R315-270-2; and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under Section 19-6-108; 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 ground water or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from Subsection R315-264-221(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 of 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 shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of Section R315-264-221 are satisfied.

R315-264-222. Action Leakage Rate.

(a) The Director shall approve an action leakage rate for surface impoundment units subject to Subsections R315-264221(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system 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 leak detection system, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the leak detection system, 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 Subsection R315-264-226(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 Subsection R315-264-228(b), monthly during the post-closure care period when monthly monitoring is required under Subsection R315-264-226(d).

R315-264-223. Response Actions.

(a) The owner or operator of surface impoundment units subject to Subsection R315-264-221(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 Subsection R315-264-223(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 7 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 Subsections R315-264-223(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 Subsections R315-264-223(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.

R315-264-226. Monitoring and Inspection.

(a) During construction and installation, liners, except in the case of existing portions of surface impoundments exempt from Subsection R315-264-221(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 Subsection R315-264-221(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.

R315-264-227. Emergency Repairs; Contingency Plans.

(a) A surface impoundment shall be removed from service in accordance with Subsection R315-264-227(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 Subsection R315-264-227(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 other 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 Sections R315-264-50 through 56, the owner or operator shall specify a procedure for complying with the requirements of Subsection R315-264-227(b).

(d) No surface impoundment that has been removed from service in accordance with the requirements of Section R315-264-227 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 Subsection R315-264-226(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 Subsection R315-264-221(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 of Section R315-264-227 and that is not being repaired shall be closed in accordance with the provisions of Section R315-264-228.

R315-264-228. 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 waste unless Subsection R315-261-3(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 Sections R315-264-117 through 120, including maintenance and monitoring throughout the post- closure care period, specified in the permit under Section R315-264-117. 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 Subsections R315-264-221(c)(2)(iv) and (3) and 226(d), and comply with all other applicable leak detection system requirements of Rule R315-264;

(3) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Sections R315-264-90 through 101; 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 Subsection R315-264-228(a)(1), and the impoundment does not comply with the liner requirements of Subsection R315-264-221(a) and is not exempt from them in accordance with Subsection R315-264-221(b), then:

(i) The closure plan for the impoundment under Section R315-264-112 shall include both a plan for complying with Subsection R315-264-228(a)(1) and a contingent plan for complying with Subsection R315-264-228(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 Section R315-264-118 for complying with Subsection R315-264-228(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under Sections R315-264-142 and 264-144 for closure and post-closure care of an impoundment subject to Subsection R315-264-228(c) 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 Subsection R315-264-228(a)(1).

R315-264-229. 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 Rule R315-268, 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 Sections R315-261-21 or 23; and

(2) Subsection R315-264-17(b) is complied with; or

(b) 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; or

(c) The surface impoundment is used solely for emergencies.

R315-264-230. Special Requirements for Incompatible Wastes.

Incompatible wastes, or incompatible wastes and materials, see appendix V of Rule R315-264 for examples, shall not be placed in the same surface impoundment, unless Subsection R315-264-17(b) is complied with.

R315-264-231. 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 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 Subsection R315-264-231(a), and in accord with all other applicable requirements of Rule R315-264. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The 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 ground water, surface water, or air so as to protect human health and the environment.

R315-264-232. Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable requirements of Sections R315-264-1050 through 1065 and 1080 through 1090.

R315-264-250. Waste Piles -- Applicability.

(a) The regulations in Sections R315-264-250 through 254 and 256 through 259 apply to owners and operators of facilities that store or treat hazardous waste in piles, except as Section R315-264-1 provides otherwise.

(b) The regulations in Sections R315-264-250 through 254 and 256 through 259 do not apply to owners or operators of waste piles that are closed with wastes left in place. Such waste piles are subject to regulation under Sections R315-264-300 through 304, 309 and 310, and 312 through 317, 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 Section R315-264-251 or under Sections R315-264-90 through 101, 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 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.

R315-264-251. 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 ground water 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 ground water 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 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 pile. The Director shall 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 shall be exempted from the requirements of Subsection R315-264-251(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 Section R315-264-93, into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Director shall 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 ground water 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 ground water or surface water.

(c) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit shall install two or more liners and a leachate collection and removal system above and between such liners.

(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 3 feet, 91 cm, of compacted soil material with a hydraulic conductivity of no more than 1 x 10^{-7} cm/sec.

(ii) The liners shall comply with Subsections R315-264-251(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 shall 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 Subsections R315-264-251(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 Subsection R315-264-251(c) 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 x 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 x 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 ground water.

(d) The Director may approve alternative design or operating practices to those specified in Subsection R315-264-251(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 Subsection R315-264-251(c); and

(2) Will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Subsection R315-264-251(c) does not apply to monofills that are granted a waiver by the Director in accordance with Section R315-264-221(e).

(f) The owner or operator of any replacement waste pile unit is exempt from Subsection R315-264-251(c) if:

(1) The existing unit was constructed in compliance with the design standards of section 3004(o)(1)(A)(i) and 3004(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 shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of Section R315-264-251 are satisfied.

R315-264-252. Action Leakage Rate.

(a) The Director shall approve an action leakage rate for waste pile units subject to Subsections R315-264-251(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system 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 leak detection system, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the leak detection system, 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 Subsection R315-264-254(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.

R315-264-253. Response Actions.

(a) The owner or operator of waste pile units subject to Subsections R315-264-251(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 Subsection R315-264-253(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 7 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 Subsections R315-264-253(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 Subsections R315-264-253(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.

R315-264-254. Monitoring and Inspection.

(a) During construction or installation, liners, except in the case of existing portions of piles exempt from Subsection R315-264-251(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 Subsection R315-264-251(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.

R315-264-256. 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 Rule R315-268, 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 Sections R315-261-21 or 23; and

(2) Subsection R315-264-17(b) is complied with; or

(b) 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.

R315-264-257. Special Requirements for Incompatible Wastes.

(a) Incompatible wastes, or incompatible wastes and materials, see appendix V of Rule R315-264 for examples, shall not be placed in the same pile, unless Subsection R315-264-17(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 Subsection R315-264-17(b).

R315-264-258. 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 Subsection R315-261-3(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 Subsection R315-264-258(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, Section R315-264-310.

(c)(1) The owner or operator of a waste pile that does not comply with the liner requirements of Subsection R315-264-251(a)(1) and is not exempt from them in accordance with Subsections R315-264-250(c) or 251(b), shall:

(i) Include in the closure plan for the pile under Section R315-264-112 both a plan for complying with Subsection R315-264-258(a) and a contingent plan for complying with Subsection R315-264-258(b) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under Section R315-264-118 for complying with Subsection R315-264-258(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under Sections R315-264-142 and 144 for closure and post-closure care of a pile subject to this Subsection R315-264-258(c) 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 Subsection R315-264-258(a).

R315-264-259. 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 Subsection R315-264-250(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 Subsection R315-264-259(a), and in accord with all other applicable requirements of Rule R315-264. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The 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 ground water, surface water, or air so as to protect human health and the environment.

R315-264-270. Land Treatment -- Applicability.

The regulations in Sections R315-264-270 through 283 apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as Section R315-264-1 provides otherwise.

R315-264-271. Treatment Program.

(a) An owner or operator subject to Sections R315-264-270 through 283 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 shall 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 a demonstration under Section R315-264-272;

(2) Design measures and operating practices necessary to maximize the success of degradation, transformation, and immobilization processes in the treatment zone in accordance with Subsection R315-264-273(a); and

(3) Unsaturated zone monitoring provisions meeting the requirements of Section R315-264-278.

(b) The Director shall specify in the facility permit the hazardous constituents that shall be degraded, transformed, or immobilized under Sections R315-264-270 through 283. Hazardous constituents are constituents identified in appendix VIII of Rule R315-261 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(c) The Director shall 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, 5 feet, from the initial soil surface; and

(2) More than 1 meter, 3 feet, above the seasonal high water table.

R315-264-272. 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 Subsection R315-264-272(a), he shall obtain a treatment or disposal permit under Section R315-270-63. The Director shall specify in this permit the testing, analytical, design, and operating requirements, including the duration of the tests and analyses, and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone, monitoring procedures, closure and clean-up activities, necessary to meet the requirements in Subsection R315-264-272(c).

(c) Any field test or laboratory analysis conducted in order to make a demonstration under Subsection R315-264-272(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 appendix VIII of Rule R315-261 constituents;

(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 likely 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 waste used in the test;

(v) In the case of field tests, the potential for migration of hazardous constituents to ground water or surface water.

R315-264-273. Design and Operating Requirements.

The Director shall specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with Section R315-264-273.

(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 Section R315-264-272. At a minimum, the Director shall specify the following in the facility permit:

(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.

R315-264-276. 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 Section R315-264-276. The Director shall specify in the facility permit 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 such crops in or on the treatment zone by demonstrating, prior to the planting of such 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 Subsection R315-264-276(a) prior to the planting of crops at the facility for all constituents identified in appendix VIII of Rule R315-261 that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under Subsection R315-264-276(a), 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 Subsection R315-264-276(a), he shall obtain a permit for conducting such 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 2 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 tobacco, leafy vegetables, or root crops grown for human consumption or any other food-chain crop;

(iii) The cumulative application of cadmium from waste shall not exceed 5 kg/ha if the waste and soil mixture has a pH of 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: 5 kg/ha if soil cation exchange capacity (CEC) is less than 5 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 Subsection R315-264-276(b)(2).

R315-264-278. Unsaturated Zone Monitoring.

An owner or operator subject to Sections R315-270 through 283 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 shall specify the hazardous constituents to be monitored in the facility permit. The hazardous constituents to be monitored are those specified under Section R315-264-271(b).

(2) The Director may require monitoring for principal hazardous constituents (PHCs) in lieu of the constituents specified under Section R315-264-271(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 shall establish PHCs if he finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment at at least equivalent levels for the other hazardous constituents in the wastes.

(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 quality 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 Subsection R315-264-278(a). The permit shall 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 Subsection R315-264-278(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 Subsection R315-264-278(b)(1).

(d) The owner or operator shall conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. The Director shall 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 Subsection R315-264-278(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 Subsection R315-264-278(a) below the treatment zone each time he conducts soil monitoring and soil-pore liquid monitoring under Subsection R315-264-278(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 Subsection R315-264-278(d), to the background value for that constituent according to the statistical procedure specified in the facility permit under Subsection R315-264-278(e).

(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 shall 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 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 shall specify a statistical procedure in the facility permit 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 Subsection R315-264-278(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 a 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 Subsection R315-264-278(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 Subsection R315-264-278(h) in addition to, or in lieu of, submitting a permit modification application under Subsection R315-264-278(g)(2), he is not relieved of the requirement to submit a permit modification application within the time specified in Subsection R315-264-278(g)(2) unless the demonstration made under Subsection R315-264-278(h) 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 Subsection R315-264-278(h), the owner or operator shall:

(1) Notify the Director in writing within seven days of determining a statistically significant increase below the treatment zone that he intends to make a determination under Subsection R315-264-278(h);

(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 Section R315-264-278.

R315-264-279. Recordkeeping.

The owner or operator shall include hazardous waste application dates and rates in the operating record required under Section R315-264-73.

R315-264-280. 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 Subsection R315-264-273(a), except to the extent such measures are inconsistent with Subsection R315-264-280(a)(8).

(2) Continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under Subsection R315-264-273(b);

(3) Maintain the run-on control system required under Subsection R315-264-273(c);

(4) Maintain the run-off management system required under Subsection R315-264-273(d);

(5) Control wind dispersal of hazardous waste if required under Subsection R315-264-273(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under Section R315-264-276;

(7) Continue unsaturated zone monitoring in compliance with Section R315-264-278, 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 such 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 Section R315-264-115, when closure is completed the owner or operator may submit to the Director certification by an independent, qualified soil scientist, in lieu of a qualified 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 such 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 Subsection R315-264-273(c);

(4) Maintain the run-off management system required under Subsection R315-264-273(d);

(5) Control wind dispersal of hazardous waste if required under Subsection R315-264-273(f);

(6) Continue to comply with any prohibitions or conditions concerning growth of food-chain crops under Section R315-264-276; and

(7) Continue unsaturated zone monitoring in compliance with Section R315-264-278, excect 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 Subsections R315-264-280(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 Subsection R315-264-280(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 Subsection R315-264-280(d):

(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 permit under Subsection R315-264-271(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 Subsection R315-264-280(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 Sections R315-264-90 through 101 if the Director finds that the owner or operator satisfies Subsection R315-264-280(d) and if unsaturated zone monitoring under Section R315-264-278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

R315-264-281. 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 Rule R315-268, 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 Sections R315-261-21 or 23; and

(2) Subsection R315-264-17(b) is complied with; or

(b) 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.

R315-264-282. Special Requirements for Incompatible Wastes.

The owner or operator shall not place incompatible wastes, or incompatible wastes and materials, see appendix V of Rule R315-264 for examples, in or on the same treatment zone, unless Subsection R315-264-17(b) is complied with.

R315-264-283. 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 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 Subsection R315-264-283(a), and in accord with all other applicable requirements of Rule R315-264. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring techniques.

(b) The Director may determine that additional design, operating, and monitoring requirements are necessary for land treatment facilities managing hazardous wastes F020, F021, F022, F023, F026, and F027 in order to reduce the possibility of migration of these wastes to ground water, surface water, or air so as to protect human health and the environment.

R315-264-300. Landfills -- Applicability.

The regulations in Sections R315-264-300 through 317 apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as Section R315-264-1 provides otherwise.

R315-264-301. Design and Operating Requirements.

(a) Any landfill that is not covered by Subsection R315-264-301(c) or 40 CFR 265.301(a), which is adopted by reference, shall have a liner system for all portions of the landfill, except for portions of such landfill that existed on or prior to October 10, 1984. 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 ground water or surface water at anytime during the active life, including the closure period, of the landfill. The liner shall be constructed of materials that prevent 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 shall 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 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 shall be exempted from the requirements of Subsection R315-264-301(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 Section R315-264-93, into the ground water or surface water at any future time. In deciding whether to grant an exemption, the Director shall 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 ground water 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 ground water 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 Section R315-260-10 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 91 cm, 3 feet, of compacted soil material with a hydraulic conductivity of no more than 1 x 10−7 cm/sec.

(ii) The liners shall comply with Subsections R315-264-301(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 shall 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 Subsections R315-264-301(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 Subsection R315-264-301(c) 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 30.5 cm, 12 inches, or more; or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m2/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 Subsection R315-264-301(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 Subsection R315-264-301(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 Subsection R315-264-301(c) 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 such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in Section R315-261-24, 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 such 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 Section R315-270-2); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under Section 19-6-108; 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 ground water or surface water at any future time.

(f) The owner or operator of any replacement landfill unit is exempt from Subsection R315-264-301(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 24-hour, 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 shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of Section R315-264-301 are satisfied.

R315-264-302. Action Leakage Rate.

(a) The Director shall approve an action leakage rate for landfill units subject to Subsections R315-264-301(c) or (d). The action leakage rate is the maximum design flow rate that the leak detection system can remove without the fluid head on the bottom liner exceeding 30.5 cm, l 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 leak detection system, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the leak detection system, 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 Subsection R315-264-303(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 Subsection R315-264-303(c).

R315-264-303. Monitoring and Inspection.

(a) During construction or installation, liners, except in the case of existing portions of landfills exempt from Subsection R315-264-301(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 Subsection R315-264-301(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.

R315-264-304. Response Actions.

(a) The owner or operator of landfill units subject to Subsections R315-264-301(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 Subsection R315-264-304(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 7 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 Subsections R315-264-304(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 Subsections R315-264-304(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.

R315-264-309. Surveying and Recordkeeping.

The owner or operator of a landfill shall maintain the following items in the operating record required under Section R315-264-73:

(a) On a map, the exact location and dimensions, 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.

R315-264-310. 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 Sections R315-264-117 through 120, including maintenance and monitoring throughout the post-closure care period, specified in the permit under Section R315-264-117. 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 Subsections R315-264-301(c)(3)(iv) and (4) and R315-264-303(c), and comply with all other applicable leak detection system requirements of Rul3 R315-264;

(4) Maintain and monitor the ground-water monitoring system and comply with all other applicable requirements of Sections R315-264-90 through 101;

(5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6) Protect and maintain surveyed benchmarks used in complying with Section R315-264-309.

R315-264-312. Special Requirements for Ignitable or Reactive Waste.

(a) Except as provided in Subsection R315-264-312(b), and in Section R316-264-316, ignitable or reactive waste shall not be placed in a landfill, unless the waste and landfill meet all applicable requirements of Rule R315-268, and:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under Sections R315-261-21 or 23; and

(2) Subsection R315-264-17(b) is complied with.

(b) Except for prohibited wastes which remain subject to treatment standards in Sections R315-268-40 through 49, ignitable wastes in containers may be landfilled without meeting the requirements of Subsection R315-264-312(a), provided that the wastes are disposed of in such 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.

R315-264-313. Special Requirements for Incompatible Wastes.

Incompatible wastes, or incompatible wastes and materials, (see appendix V of Rule R315-264 for examples) shall not be placed in the same landfill cell, unless Subsection R315-264-17(b) is complied with.

R315-264-314. Special Requirements for Bulk and Containerized Liquids.

(a) 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.

(b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test shall be used: Method 9095B, Paint Filter Liquids Test, as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in Section R315-260-11.

(c) 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 Section R316-264-316 and is disposed of in accordance with Section R316-264-316.

(d) Sorbents used to treat free liquids to be disposed of in landfills shall be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in Subsection R315-264-314(d)(1); materials that pass one of the tests in Subsection R315-264-314(d)(2); or materials that are determined by the Director to be nonbiodegradable through the Rule R315-260 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 OECD test 301B: CO2 Evolution - Modified Sturm Test.

(e) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Director, or the Director determines that:

(1) The only reasonably available alternative to the placement in such 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 Section R315-270-2.

R315-264-315. 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.

R315-264-316. 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 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 Department of Transportation-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 Subsection R315-264-314(d), 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 Subsection R315-264-17(b).

(d) Incompatible wastes, as defined in Section R315-260-10, shall not be placed in the same outside container.

(e) Reactive wastes, other than cyanide- or sulfide-bearing waste as defined in Subsection R315-261-23(a)(5), shall be treated or rendered non-reactive prior to packaging in accordance with Subsections R315-264-316(a) through (d). Cyanide- and sulfide-bearing reactive waste may be packed in accordance with Subsections R315-264-316(a) through (d) without first being treated or rendered non-reactive.

(f) Such disposal is in compliance with the requirements of Rule R315-268. Persons who incinerate lab packs according to the requirements in Subsection R315-268-42(c)(1) may use fiber drums in place of metal outer containers. Such fiber drums shall meet the Department of Transportation specifications in 49 CFR 173.12 and be overpacked according to the requirements in Subsection R315-264-316(b).

R315-264-317. 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 Section R315-264-317, and in accord with all other applicable requirements of Rule R315-264. The factors to be considered are:

(1) The volume, physical, and chemical characteristics of the wastes, including their potential to migrate through the soil or to volatilize or escape into the atmosphere;

(2) The attenuative properties of underlying and surrounding soils or other materials;

(3) The mobilizing properties of other materials co-disposed with these wastes; and

(4) The effectiveness of additional treatment, design, or monitoring requirements.

(b) The 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 ground water, surface water, or air so as to protect human health and the environment.

R315-264-340. Incinerator -- Applicability.

(a) The regulations of Sections R315-264-340 through 351 apply to owners and operators of hazardous waste incinerators, as defined in Section R315-260-10, except as Section R315-264-1 provides otherwise.

(b) Integration of the MACT standards.

(1) Except as provided by Subsections R315-264-340(b)(2) through (b)(4), the standards of Rule R315-264 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 Section R307-214-2 by conducting a comprehensive performance test and submitting to the Director a Notification of Compliance under Section R307-14-2 documenting compliance with the requirements of Section R307-14-2. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of

Rule R315-264 shall 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 Section R315-264-351 or the applicable requirements of Sections R315-264-1 through 4, 10 though 19, 30 through 37, 50 through 56, 70 through 77, 90 through 101, 110 through 120, 140 through 151, 1050 through 1065 and 1080 through 1090.

(3) The particulate matter standard of Subsection R315-264-343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under Section R307-214-2.

(4) The following requirements remain in effect for startup, shutdown, and malfunction events if you elect to comply with Subsection R35-270-235(a)(1)(i) to minimize emissions of toxic compounds from these events:

(i) Subsection R315-264-345(a) requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(ii) Subsection R315-264-345(c) requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

(c) After consideration of the waste analysis included with part B of the permit application, the Director, in establishing the permit conditions, shall exempt the applicant from all requirements of Sections R315-264-340 through 351 except Section R315-264-341, Waste analysis, and Section R315-264-351, Closure,

(1) If the Director finds that the waste to be burned is:

(i) Listed as a hazardous waste in Sections R315-261-30 through 35 solely because it is ignitable, Hazard Code I, corrosive, Hazard Code C, or both; or

(ii) Listed as a hazardous waste in Sections R315-261-30 through 35 solely because it is reactive, Hazard Code R, for characteristics other than those listed in Subsections R315-261-23(a)(4) and (5), 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 characteristic of ignitability, corrosivity, or both, as determined by the test for characteristics of hazardous wastes under Sections R315-261-20 through 24; or

(iv) A hazardous waste solely because it possesses any of the reactivity characteristics described by Subsections R315-261-23(a)(1), (2), (3), (6), (7), and (8), 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 Rule R315-261, appendix VIII, which would reasonably be expected to be in the waste.

(d) If the waste to be burned is one which is described by Subsections R315-264-340(b)(1)(i), (ii), (iii), or (iv) and contains insignificant concentrations of the hazardous constituents listed in Rule R315-261, appendix VIII, then the Director may, in establishing permit conditions, exempt the applicant from all requirements of Sections R315-264-340 through 351, except Section R315-264-341, Waste analysis, and Section R315-264-351, 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 Section R315-270-62, Short term and incinerator permits.

R315-264-341. Waste Analysis.

(a) As a portion of the trial burn plan required by Section R315-270-62, or with part B of the permit application, the owner or operator shall have included an analysis of the waste feed sufficient to provide all information required by Subsection R315-270-62(b) or Section R315-270-19. Owners or operators of new hazardous waste incinerators shall provide the information required by Subsection R315-270-62(c) or Section R315-270-19 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, under Subsection R315-264-345(b).

R315-264-342. Principal Organic Hazardous Constituents.

(a) Principal organic hazardous constituents in the waste feed shall be treated to the extent required by the performance standard of Section R315-264-343.

(b)(1) One or more principal organic hazardous constituents shall be specified in the facility's permit, from among those constituents listed in appendix VIII of Rule R315-261 for each waste feed to be burned. This specification shall 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 facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as principal organic hazardous constituents. Constituents are more likely to be designated as principal organic hazardous constituents if they are present in large quantities or concentrations in the waste.

(2) Trial principal organic hazardous constituents shall be designated for performance of trial burns in accordance with the procedure specified in Section R315-270-62 for obtaining trial burn permits.

R315-264-343. Performance Standards.

An incinerator burning hazardous waste shall be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section R315-264-345, it shall meet the following performance standards:

(a)(1) Except as provided in Subsection R315-264-343(a)(2), an incinerator burning hazardous waste shall achieve a destruction and removal efficiency of 99.99% for each principal organic hazardous constituent designated, under Section R315-264-342, in its permit for each waste feed. Destruction and removal efficiency is determined for each principal organic hazardous constituent from the following equation:

Destruction and removal efficiency = ((Win-Wout)/Win)x100%

where:

Win = mass feed rate of one principal organic hazardous constituent in the waste stream feeding the incinerator

and

Wout = mass emission rate of the same principal organic hazardous constituent present in exhaust emissions prior to release to the atmosphere.

(2) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 shall achieve a destruction and removal efficiency of 99.9999% for each principal organic hazardous constituent designated, under Section R315-264-342, in its permit. This performance shall be demonstrated on principal organic hazardous constituents that

are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. Destruction and removal efficiency is determined for each principal organic hazardous constituent from the equation in Subsection R315-264-343(a)(1).

(b) An incinerator burning hazardous waste and producing stack emissions of more than 1.8 kilograms per hour, 4 pounds per hour, of hydrogen chloride shall control hydrogen chloride emissions such that the rate of emission is no greater than the larger of either 1.8 kilograms per hour or 1% of the hydrogen chloride in the stack gas prior to entering any pollution control equipment.

(c) 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:

$Pc = Pm \times (14/(21-Y))$

Where Pc is the corrected concentration of particulate matter, Pm 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, presented in 40 CFR 60, appendix A Method 3, which is adopted and incorporated by Section R307-221-3. 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 shall select an appropriate correction procedure, to be specified in the facility permit.

(d) For purposes of permit enforcement, compliance with the operating requirements specified in the permit, under Section R315-264-345, shall be regarded as compliance with Section R315-264-343. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of Section R315-264-343 may be "information" justifying modification, revocation, or reissuance of a permit under Section R315-270-41.

R315-264-344. 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 Section R315-264-345, except:

(1) In approved trial burns under Section R315-270-62; or

(2) Under exemptions created by Section R315-264-340.

(b) Other hazardous wastes may be burned only 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 application under Section R315-270-19.

(c) The permit for a new hazardous waste incinerator shall establish appropriate conditions for each of the applicable requirements of Sections R315-264-340 through 351, including but not limited to allowable waste feeds and operating conditions necessary to meet the requirements of Section R315-264-345, 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 Subsection R315-264-344(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 of Section R315-264-343, based on the Director's engineering judgment. 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 Section R315-264-343 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 Section R315-264-343, based on the Director's engineering judgment.

(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 Subsection R315-270-19(c), as sufficient to ensure compliance with the performance standards of Section R315-264-343.

R315-264-345. Operating Requirements.

(a) An incinerator shall be operated in accordance with operating requirements specified in the permit. These shall be specified on a case-by-case basis as those demonstrated, in a trial burn or in alternative data as specified in Subsection R315-264-344(b) and included with part B of a facility's permit application, to be sufficient to comply with the performance standards of Section R315-264-343.

(b) Each set of operating requirements shall 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 requirement of Section R315-264-343, to which the operating requirements apply. For each such waste feed, the permit shall specify acceptable operating limits including the following conditions:

(1) Carbon monoxide 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) Such other operating requirements as are necessary to ensure that the performance standards of Section R315-264-343 are met.

(c) During start-up and shut-down of an incinerator, hazardous waste, except wastes exempted in accordance with Section R315-264-340, 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 alternate means of control demonstrated, with part B of the permit application, 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 Subsection R315-264-345(a).

(f) An incinerator shall cease operation when changes in

waste feed, incinerator design, or operating conditions exceed limits designated in its permit.

R315-264-347. 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 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 Section R315-264-343.

(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 inspection 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 Section R315-264-73 and maintained in the operating record for five years.

R315-264-351. 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 Subsection R315-261-3(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 of Rules R315-262 through 266.

R315-264-550. Applicability of Corrective Action Management Unit (CAMU) Regulations.

(a) Except as provided in Subsection R315-264-550(b), CAMUs are subject to the requirements of Section R315-264-552.

(b) CAMUs that were approved before April 22, 2002, or for which substantially complete applications (or equivalents) were submitted to the Agency on or before November 20, 2000, are subject to the requirements in Section R315-264-551 for grandfathered CAMUs; CAMU waste, activities, and design shall not be subject to the standards in Section R315-264-552, so long as the waste, activities, and design remain within the general scope of the CAMU as approved.

R315-264-551. Grandfathered Corrective Action Management Units (CAMUs).

(a) To implement remedies under Section R315-264-101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to Section R315-264-101, the Director may designate an area at the facility as a corrective action management unit under the requirements in Section R315-264-551. Corrective action management unit means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility. A CAMU shall be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(2) Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Director may designate a regulated unit, as defined in Subsection R315-264-90(a)(2), as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under Section R315-264-113 or 40 CFR 265.113, which is adopted by reference; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The requirements of Sections R315-264-90 through 101, 110 through 120, and 140 through 151 and the unit-specific requirements of Rules R315-264 or 265 that applied to that regulated unit shall continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Director shall designate a CAMU in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies, including innovative technologies, to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Director to designate a CAMU in accordance with the criteria in Section R315-264-552.

(e) The Director shall specify, in the permit or order, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Requirements for remediation waste management to include the specification of applicable design, operation and closure requirements.

(3) Requirements for ground water monitoring that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of

hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU.

(4) Closure and post-closure requirements.

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Director for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes;

(B) For areas in which wastes will remain after closure of the CAMU, requirements for capping of such areas; and

(C) Requirements for removal and decontamination of equipment, devices, and structures used in remediation waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under Subsection R315-264-552(e), the Director shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) The Director shall document the rationale for designating CAMUs and shall make such documentation available to the public.

(g) Incorporation of a CAMU into an existing permit shall be approved by the Director according to the procedures for permit modifications under Section R315-270-41, or according to the permit modification procedures of Section R315-270-42.

(h) The designation of a CAMU does not change the Director's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

R315-264-552. Corrective Action Management Units (CAMU).

(a) To implement remedies under Subsection R315-264-101 or RCRA Section 3008(h), or to implement remedies at a permitted facility that is not subject to Subsection R315-264-101, the Director may designate an area at the facility as a corrective action management unit under the requirements in Section R315-264-552. Corrective action management unit means an area within a facility that is used only for managing CAMU-eligible wastes for implementing corrective action or cleanup at the facility. A CAMU shall be located within the contiguous property under the control of the owner or operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) CAMU-eligible waste means:

(i) All solid and hazardous wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup. As-generated wastes, either hazardous or non-hazardous, from ongoing industrial operations at a site are not CAMU-eligible wastes.

(ii) Wastes that would otherwise meet the description in Subsection R315-264-552(a)(1)(i) are not "CAMU-Eligible Wastes" where:

(A) The wastes are hazardous wastes found during cleanup in intact or substantially intact containers, tanks, or other non-land-based units found above ground, unless the wastes are first placed in the tanks, containers or non-land-based units as part of cleanup, or the containers or tanks are excavated during the course of cleanup; or

(B) The Director exercises the discretion in Subsection R315-264-552(a)(2) to prohibit the wastes from management in a CAMU.

(iii) Notwithstanding Subsection R315-264-552(a)(1)(i), where appropriate, as-generated non-hazardous waste may be placed in a CAMU where such waste is being used to facilitate treatment or the performance of the CAMU.

(2) The Director may prohibit, where appropriate, the placement of waste in a CAMU where the Director has or receives information that such wastes have not been managed in compliance with applicable land disposal treatment standards of Rule R315-268, or applicable unit design requirements of Rule R315-264, or applicable unit design requirements of Rule R315-265, or that non-compliance with other applicable requirements of Rules R315-260 through 266, 268, 270 and 273 likely contributed to the release of the waste.

(3) Prohibition against placing liquids in CAMUs.

(i) The placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste, whether or not sorbents have been added, in any CAMU is prohibited except where placement of such wastes facilitates the remedy selected for the waste.

(ii) The requirements in Subsection R315-264-314(c) for placement of containers holding free liquids in landfills apply to placement in a CAMU except where placement facilitates the remedy selected for the waste.

(iii) The placement of any liquid which is not a hazardous waste in a CAMU is prohibited unless such placement facilitates the remedy selected for the waste or a demonstration is made pursuant to Subsection R315-264-314(e).

(iv) The absence or presence of free liquids in either a containerized or a bulk waste shall be determined in accordance with Subsection R315-264-314(b). Sorbents used to treat free liquids in CAMUs shall meet the requirements of Subsection R315-264-314(d).

(4) Placement of CAMU-eligible wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(5) Consolidation or placement of CAMU-eligible wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

(b)(1) The Director may designate a regulated unit, as defined in Subsection R315-264-90(a)(2), as a CAMU, or may incorporate a regulated unit into a CAMU, if:

(i) The regulated unit is closed or closing, meaning it has begun the closure process under Section R315-264-113 or 40 CFR 265.113, which is adopted by reference; and

(ii) Inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility.

(2) The requirements of Sections R315-264-90 through

101, 110 through 120, and 140 through 151 and the unit-specific requirements of Rules R315-264 or 265 that applied to the regulated unit shall continue to apply to that portion of the CAMU after incorporation into the CAMU.

(c) The Director shall designate a CAMU that will be used for storage and/or treatment only in accordance with Subsection R315-264-552(f). The Director shall designate all other CAMUs in accordance with the following:

(1) The CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies;

(2) Waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents;

(3) The CAMU shall include uncontaminated areas of the facility, only if including such areas for the purpose of managing CAMU-eligible waste is more protective than management of such wastes at contaminated areas of the facility;

(4) Areas within the CAMU, where wastes remain in place after closure of the CAMU, shall be managed and contained so as to minimize future releases, to the extent practicable;

(5) The CAMU shall expedite the timing of remedial activity implementation, when appropriate and practicable;

(6) The CAMU shall enable the use, when appropriate, of treatment technologies, including innovative technologies, to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the CAMU; and

(7) The CAMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the CAMU.

(d) The owner/operator shall provide sufficient information to enable the Director to designate a CAMU in accordance with the criteria in Section R315-264-552. This shall include, unless not reasonably available, information on:

(1) The origin of the waste and how it was subsequently managed, including a description of the timing and circumstances surrounding the disposal and/or release;

(2) Whether the waste was listed or identified as hazardous at the time of disposal and/or release; and

(3) Whether the disposal and/or release of the waste occurred before or after the land disposal requirements of Rule R315-268 were in effect for the waste listing or characteristic.

(e) The Director shall specify, in the permit or order, requirements for CAMUs to include the following:

(1) The areal configuration of the CAMU.

(2) Except as provided in Subsection R315-264-552(g), requirements for CAMU-eligible waste management to include the specification of applicable design, operation, treatment and closure requirements.

(3) Minimum design requirements. CAMUs, except as provided in Subsection R315-264-552(f), into which wastes are placed shall be designed in accordance with the following:

(i) Unless the Director approves alternate requirements under Subsection R315-264-552(e)(3)(ii), CAMUs that consist of new, replacement, or laterally expanded units shall include a composite liner and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. For purposes of Section R315-264-552, composite liner means a system consisting of two components; the upper component shall consist of a minimum 30-mil flexible membrane liner (FML), and the lower component shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10-7 cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component;

(ii) Alternate requirements. The Director may approve alternate requirements if:

(A) The Director finds that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liner and leachate collection systems in Subsection R315-264-552(e)(3)(i); or

(B) The CAMU is to be established in an area with existing significant levels of contamination, and the Director finds that an alternative design, including a design that does not include a liner, would prevent migration from the unit that would exceed long-term remedial goals.

(4) Minimum treatment requirements: Unless the wastes will be placed in a CAMU for storage and/or treatment only in accordance with Subsection R315-264-552(f), CAMU-eligible wastes that, absent Section R315-264-552, would be subject to the treatment requirements of Rule R315-268, and that the Director determines contain principal hazardous constituents shall be treated to the standards specified in Subsection R315-264-552(e)(4)(iii).

(i) Principal hazardous constituents are those constituents that the Director determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(A) In general, the Director shall designate as principal hazardous constituents:

(I) Carcinogens that pose a potential direct risk from ingestion or inhalation at the site at or above 10^{-3}; and

(II) Non-carcinogens that pose a potential direct risk from ingestion or inhalation at the site an order of magnitude or greater over their reference dose.

(B) The Director shall also designate constituents as principal hazardous constituents, where appropriate, when risks to human health and the environment posed by the potential migration of constituents in wastes to ground water are substantially higher than cleanup levels or goals at the site; when making such a designation, the Director may consider such factors as constituent concentrations, and fate and transport characteristics under site conditions.

(C) The Director may also designate other constituents as principal hazardous constituents that the Director determines pose a risk to human health and the environment substantially higher than the cleanup levels or goals at the site.

(ii) In determining which constituents are "principal hazardous constituents," the Director shall consider all constituents which, absent Section R315-264-552, would be subject to the treatment requirements in Rule R315-268.

(iii) Waste that the Director determines contains principal hazardous constituents shall meet treatment standards determined in accordance with Subsections R315-264-552(e)(4)(iv) or (e)(4)(v).

(iv) Treatment standards for wastes placed in CAMUs.

(A) For non-metals, treatment shall achieve 90 percent reduction in total principal hazardous constituent concentrations, except as provided by Subsection R315-264-552(e)(4)(iv)(C).

(B) For metals, treatment shall achieve 90 percent reduction in principal hazardous constituent concentrations as measured in leachate from the treated waste or media, tested according to the TCLP, or 90 percent reduction in total constituent concentrations, when a metal removal treatment technology is used, except as provided by Subsection R315-264-552(e)(4)(iv)(C).

(C) When treatment of any principal hazardous constituent to a 90 percent reduction standard would result in

a concentration less than 10 times the Universal Treatment Standard for that constituent, treatment to achieve constituent concentrations less than 10 times the Universal Treatment Standard is not required. Universal Treatment Standards are identified in Section R315-268-48 Table UTS.

(D) For waste exhibiting the hazardous characteristic of ignitability, corrosivity or reactivity, the waste shall also be treated to eliminate these characteristics.

(E) For debris, the debris shall be treated in accordance with Section R315-268-45, or by methods or to levels established under Subsections R315-264-552(e)(4)(iv)(A) through (D) or Subsection R315-264-552(e)(4)(v), whichever the Director determines is appropriate.

(F) Alternatives to TCLP. For metal bearing wastes for which metals removal treatment is not used, the Director may specify a leaching test other than the TCLP, SW846 Method 1311, Rule R315-260-11(c)(3)(v), to measure treatment effectiveness, provided the Director determines that an alternative leach testing protocol is appropriate for use, and that the alternative more accurately reflects conditions at the site that affect leaching.

(v) Adjusted standards. The Director may adjust the treatment level or method in Subsection R315-264-552(e)(4)(iv) to a higher or lower level, based on one or more of the following factors, as appropriate. The adjusted level or method shall be protective of human health and the environment:

(A) The technical impracticability of treatment to the levels or by the methods in Subsection R315-264-552(e)(4)(iv);

(B) The levels or methods in Subsection R315-264-552(e)(4)(iv) would result in concentrations of principal hazardous constituents (PHCs) that are significantly above or below cleanup standards applicable to the site, established either site-specifically, or promulgated under state or federal law;

(C) The views of the affected local community on the treatment levels or methods in Subsection R315-264-552(e)(4)(iv) as applied at the site, and, for treatment levels, the treatment methods necessary to achieve these levels;

(D) The short-term risks presented by the on-site treatment method necessary to achieve the levels or treatment methods in Subsection R315-264-552(e)(4)(iv);

(E) The long-term protection offered by the engineering design of the CAMU and related engineering controls:

(I) Where the treatment standards in Subsection R315-264-552(e)(4)(iv) are substantially met and the principal hazardous constituents in the waste or residuals are of very low mobility; or

(II) Where cost-effective treatment has been used and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at Subsections R315-264-301(c) and (d); or

(III) Where, after review of appropriate treatment technologies, the Director determines that cost-effective treatment is not reasonably available, and the CAMU meets the Subtitle C liner and leachate collection requirements for new land disposal units at Subsection R315-264-301(c) and (d); or

(IV) Where cost-effective treatment has been used and the principal hazardous constituents in the treated wastes are of very low mobility; or

(V) Where, after review of appropriate treatment technologies, the Director determines that cost-effective treatment is not reasonably available, the principal hazardous constituents in the wastes are of very low mobility, and either the CAMU meets or exceeds the liner standards for new, replacement, or laterally expanded CAMUs in Subsections R315-264-552(e)(3)(i) and (ii), or the CAMU provides substantially equivalent or greater protection.

(vi) The treatment required by the treatment standards shall be completed prior to, or within a reasonable time after, placement in the CAMU.

(vii) For the purpose of determining whether wastes placed in CAMUs have met site-specific treatment standards, the Director may, as appropriate, specify a subset of the principal hazardous constituents in the waste as analytical surrogates for determining whether treatment standards have been met for other principal hazardous constituents. This specification shall be based on the degree of difficulty of treatment and analysis of constituents with similar treatment properties.

(5) Except as provided in Subsection R315-264-552(f), requirements for ground water monitoring and corrective action that are sufficient to:

(i) Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of hazardous constituents in ground water from sources located within the CAMU; and

(ii) Detect and subsequently characterize releases of hazardous constituents to ground water that may occur from areas of the CAMU in which wastes will remain in place after closure of the CAMU; and

(iii) Require notification to the Director and corrective action as necessary to protect human health and the environment for releases to ground water from the CAMU.

(6) Except as provided in Subsection R315-264-552(f), closure and post-closure requirements:

(i) Closure of corrective action management units shall:

(A) Minimize the need for further maintenance; and

(B) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground, to surface waters, or to the atmosphere.

(ii) Requirements for closure of CAMUs shall include the following, as appropriate and as deemed necessary by the Director for a given CAMU:

(A) Requirements for excavation, removal, treatment or containment of wastes; and

(B) Requirements for removal and decontamination of equipment, devices, and structures used in CAMU-eligible waste management activities within the CAMU.

(iii) In establishing specific closure requirements for CAMUs under Subsection R315-264-552(e), the Director shall consider the following factors:

(A) CAMU characteristics;

(B) Volume of wastes which remain in place after closure;

(C) Potential for releases from the CAMU;

(D) Physical and chemical characteristics of the waste;

(E) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

(F) Potential for exposure of humans and environmental receptors if releases were to occur from the CAMU.

(iv) Cap requirements:

(A) At final closure of the CAMU, for areas in which wastes will remain after closure of the CAMU, with constituent concentrations at or above remedial levels or goals applicable to the site, the owner or operator shall cover the CAMU with a final cover designed and constructed to meet the following performance criteria, except as provided in Subsection R315-264-552(e)(6)(iv)(B):

(1) Provide long-term minimization of migration of liquids through the closed unit;

(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) The Director may determine that modifications to Subsection R315-264-552(e)(6)(iv)(A) are needed to facilitate treatment or the performance of the CAMU, e.g., to promote biodegradation.

(v) Post-closure requirements as necessary to protect human health and the environment, to include, for areas where wastes will remain in place, monitoring and maintenance activities, and the frequency with which such activities shall be performed to ensure the integrity of any cap, final cover, or other containment system.

(f) CAMUs used for storage and/or treatment only are CAMUs in which wastes will not remain after closure. Such CAMUs shall be designated in accordance with all of the requirements of Section R315-264-552, except as follows.

(1) CAMUs that are used for storage and/or treatment only and that operate in accordance with the time limits established in the staging pile regulations at Subsections R315-264-554(d)(1)(iii), (h), and (i) are subject to the requirements for staging piles at Subsections R315-264-554(d)(1)(i) and (ii), (d)(2), (e) and (f), (j), and (k) in lieu of the performance standards and requirements for CAMUs in Subsections R315-264-552(c) and (e)(3) through (6).

(2) CAMUs that are used for storage and/or treatment only and that do not operate in accordance with the time limits established in the staging pile regulations at Subsections R315-264-554(d)(1)(iii), (h), and (i):

(i) Shall operate in accordance with a time limit, established by the Director, that is no longer than necessary to achieve a timely remedy selected for the waste, and

(ii) Are subject to the requirements for staging piles at Subsection R315-264-554(d)(1)(i) and (ii), (d)(2), (e) and (f), (j), and (k) in lieu of the performance standards and requirements for CAMUs in Subsection R315-264-552(c) and (e)(4) and (6).

(g) CAMUs into which wastes are placed where all wastes have constituent levels at or below remedial levels or goals applicable to the site do not have to comply with the requirements for liners at Subsection R315-264-552(e)(3)(i), caps at Subsection R315-264-552(e)(6)(iv), ground water monitoring requirements at Subsection R315-264-552(e)(5) or, for treatment and/or storage-only CAMUs, the design standards at Subsection R315-264-552(f).

(h) The Director shall provide public notice and a reasonable opportunity for public comment before designating a CAMU. Such notice shall include the rationale for any proposed adjustments under Subsection R315-264-552(e)(4)(v) to the treatment standards in Subsection R315-264-552(e)(4)(iv).

(i) Notwithstanding any other provision of Section R315-264-552, the Director may impose additional requirements as necessary to protect human health and the environment.

(j) Incorporation of a CAMU into an existing permit shall be approved by the Director according to the procedures for permit modifications under Section R315-270-41, or according to the permit modification procedures of Section R315-270-42.

(k) The designation of a CAMU does not change the Director's existing authority to address clean-up levels, media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

R315-264-553. Temporary Units (TU).

(a) For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under Section R315-264-101 or RCRA 3008(h), or at a permitted facility that is not subject to Section R315-264-101, the Director may designate a unit at the facility, as a temporary unit. A temporary unit shall be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the temporary unit originated. For temporary units, the Director may replace the design, operating, or closure standard applicable to these units under Rule R315-264 or 265 with alternative requirements which protect human health and the environment.

(b) Any temporary unit to which alternative requirements are applied in accordance with Subsection R315-264-553(a) shall be:

(1) Located within the facility boundary; and

(2) Used only for treatment or storage of remediation wastes.

(c) In establishing standards to be applied to a temporary unit, the Director shall consider the following factors:

(1) Length of time such unit will be in operation;

(2) Type of unit;

(3) Volumes of wastes to be managed;

(4) Physical and chemical characteristics of the wastes to be managed in the unit;

(5) Potential for releases from the unit;

(6) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and

(7) Potential for exposure of humans and environmental receptors if releases were to occur from the unit.

(d) The Director shall specify in the permit or order the length of time a temporary unit will be allowed to operate, to be no longer than a period of one year. The Director shall also specify the design, operating, and closure requirements for the unit.

(e) The Director may extend the operational period of a temporary unit once for no longer than a period of one year beyond that originally specified in the permit or order, if the Director determines that:

(1) Continued operation of the unit will not pose a threat to human health and the environment; and

(2) Continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(f) Incorporation of a temporary unit or a time extension for a temporary unit into an existing permit shall be:

(1) Approved in accordance with the procedures for permit modifications under Section R315-270-41; or

(2) Requested by the owner/operator as a Class II modification according to the procedures under Section R315-270-42.

(g) The Director shall document the rationale for designating a temporary unit and for granting time extensions for temporary units and shall make such documentation available to the public.

R315-264-554. Staging Piles.

Section R315-264-554 is written in a special format to make it easier to understand the regulatory requirements. Like other regulations, this establishes enforceable legal requirements. For Section R315-264-554 "I" and "you" refer to the owner/operator.

(a) What is a staging pile? A staging pile is an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment

building and is used only during remedial operations for temporary storage at a facility. A staging pile shall be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles shall be designated by the Director according to the requirements in Section R315-264-554.

(1) For the purposes of Section R315-264-554, storage includes mixing, sizing, blending, or other similar physical operations as long as they are intended to prepare the wastes for subsequent management or treatment.

(b) When may I use a staging pile? You may use a staging pile to store hazardous remediation waste, or remediation waste otherwise subject to land disposal restrictions, only if you follow the standards and design criteria the Director has designated for that staging pile. The Director shall designate the staging pile in a permit or, at an interim status facility, in a closure plan or order, consistent with Subsections R315-270-72(a)(5) and (b)(5). The Director shall establish conditions in the permit, closure plan, or order that comply with Subsection R315-264-554(d) through (k).

(c) What information shall I provide to get a staging pile designated? When seeking a staging pile designation, you shall provide:

(1) Sufficient and accurate information to enable the Director to impose standards and design criteria for your staging pile according to Section R315-264-554(d) through (k);

(2) Certification by a qualified Professional Engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

(3) Any additional information the Director determines is necessary to protect human health and the environment.

(d) What performance criteria shall a staging pile satisfy? The Director shall establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

(1) The standards and design criteria shall comply with the following:

(i) The staging pile shall facilitate a reliable, effective and protective remedy;

(ii) The staging pile shall be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment, for example, through the use of liners, covers, run-off/run-on controls, as appropriate; and

(iii) The staging pile shall not operate for more than two years, except when the Director grants an operating term extension under Subsection R315-264-554(i), entitled "May I receive an operating extension for a staging pile?". You shall measure the two-year limit, or other operating term specified by the Director in the permit, closure plan, or order, from the first time you place remediation waste into a staging pile. You shall maintain a record of the date when you first placed remediation waste into the staging pile for the life of the permit, closure plan, or order, or for three years, whichever is longer.

(2) In setting the standards and design criteria, the Director shall consider the following factors:

(i) Length of time the pile will be in operation;

(ii) Volumes of wastes you intend to store in the pile;

(iii) Physical and chemical characteristics of the wastes to be stored in the unit;

(iv) Potential for releases from the unit;

(v) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and

(vi) Potential for human and environmental exposure to potential releases from the unit;

(e) May a staging pile receive ignitable or reactive remediation waste? You shall not place ignitable or reactive remediation waste in a staging pile unless:

(1) You have treated, rendered or mixed the remediation waste before you placed it in the staging pile so that:

(i) The remediation waste no longer meets the definition of ignitable or reactive under Sections R315-261-21 or 23; and

(ii) You have complied with Subsection R315-264-17(b); or

(2) You manage the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.

(f) How do I handle incompatible remediation wastes in a staging pile? The term "incompatible waste" is defined in Section R315-260-10. You shall comply with the following requirements for incompatible wastes in staging piles:

(1) You shall not place incompatible remediation wastes in the same staging pile unless you have complied with Subsection R315-264-17(b);

(2) If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers, other piles, open tanks or land disposal units, for example, surface impoundments, you shall separate the incompatible materials, or protect them from one another by using a dike, berm, wall or other device; and

(3) You shall not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with Subsection R315-264-17(b).

(g) Are staging piles subject to Land Disposal Restrictions and Minimum Technological Requirements? No. Placing hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or create a unit that is subject to the minimum technological requirements of RCRA 3004(o).

(h) How long may I operate a staging pile? The Director may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. You shall use a staging pile no longer than the length of time designated by the Director in the permit, closure plan, or order, the "operating term", except as provided in Subsection R315-264-554(i).

(i) May I receive an operating extension for a staging pile?

(1) The Director may grant one operating term extension of up to 180 days beyond the operating term limit contained in the permit, closure plan, or order, see Subsection R315-264-554(l) for modification procedures. To justify to the Director the need for an extension, you shall provide sufficient and accurate information to enable the Director to determine that continued operation of the staging pile:

(i) Will not pose a threat to human health and the environment; and

(ii) Is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(2) The Director may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure protection of human health and the environment.

(j) What is the closure requirement for a staging pile located in a previously contaminated area?

(1) Within 180 days after the operating term of the staging pile expires, you shall close a staging pile located in a

previously contaminated area of the site by removing or decontaminating all:

(i) Remediation waste;

(ii) Contaminated containment system components; and

(iii) Structures and equipment contaminated with waste and leachate.

(2) You shall also decontaminate contaminated subsoils in a manner and according to a schedule that the Director determines will protect human health and the environment.

(3) The Director shall include the above requirements in the permit, closure plan, or order in which the staging pile is designated.

(k) What is the closure requirement for a staging pile located in an uncontaminated area?

(1) Within 180 days after the operating term of the staging pile expires, you shall close a staging pile located in an uncontaminated area of the site according to Subsections R315-264-258(a) and 264-111; or according to 40 CFR 265.258(a) and 265.111, which are adopted by reference.

(2) The Director shall include the above requirement in the permit, closure plan, or order in which the staging pile is designated.

(l) How may my existing permit, for example, Remedial Action Plan, closure plan, or order be modified to allow me to use a staging pile?

(1) To modify a permit, other than a Remedial Action Plan, to incorporate a staging pile or staging pile operating term extension, either:

(i) The Director shall approve the modification under the procedures for permit modifications in Section R315-270-41; or

(ii) You shall request a Class 2 modification under Section R315-270-42.

(2) To modify a Remedial Action Plan to incorporate a staging pile or staging pile operating term extension, you shall comply with the Remedial Action Plan modification requirements under Sections R315-270-170 and 175.

(3) To modify a closure plan to incorporate a staging pile or staging pile operating term extension, you shall follow the applicable requirements under Section R315-264-112(c) or 40 CFR 265.112(c), which is adopted by reference.

(4) To modify an order to incorporate a staging pile or staging pile operating term extension, you shall follow the terms of the order and the applicable provisions of Subsection R315-270-72(a)(5) or (b)(5).

(m) Is information about the staging pile available to the public? The Director shall document the rationale for designating a staging pile or staging pile operating term extension and make this documentation available to the public.

R315-264-555. Disposal of CAMU-Eligible Wastes in Permitted Hazardous Waste Landfills.

(a) The Director may approve placement of CAMU-eligible wastes in hazardous waste landfills not located at the site from which the waste originated, without the wastes meeting the requirements of Rule R315-268, if the conditions in Subsections R315-264-555(a)(1) through (3) are met:

(1) The waste meets the definition of CAMU-eligible waste in Subsection R315-264-552(a)(1) and (2).

(2) The Director identifies principal hazardous constitutes in such waste, in accordance with Subsection R315-264-552(e)(4)(i) and (ii), and requires that such principal hazardous constituents are treated to any of the following standards specified for CAMU-eligible wastes:

(i) The treatment standards under Subsection R315-264-552(e)(4)(iv); or

(ii) Treatment standards adjusted in accordance with Subsection R315-264-552(e)(4)(v)(A), (C), (D) or (E)(I); or

(iii) Treatment standards adjusted in accordance with Subsection R315-264-552(e)(4)(v)(E)(II), where treatment has been used and that treatment significantly reduces the toxicity or mobility of the principal hazardous constituents in the waste, minimizing the short-term and long-term threat posed by the waste, including the threat at the remediation site.

(3) The landfill receiving the CAMU-eligible waste shall have a permit issued under Section 19-6-108, meet the requirements for new landfills in Sections R315-264-300 through 317, and be authorized to accept CAMU-eligible wastes; for the purposes of this requirement, "permit" does not include interim status.

(b) The person seeking approval shall provide sufficient information to enable the Director to approve placement of CAMU-eligible waste in accordance with Subsection R315-264-555(a). Information required by Subsections R315-264-552(d)(1) through (3) for CAMU applications shall be provided, unless not reasonably available.

(c) The Director shall provide public notice and a reasonable opportunity for public comment before approving CAMU eligible waste for placement in an off-site permitted hazardous waste landfill, consistent with the requirements for CAMU approval at Subsection R315-264-552(h). The approval shall be specific to a single remediation.

(d) Applicable hazardous waste management requirements in Rule R315-264, including recordkeeping requirements to demonstrate compliance with treatment standards approved under Section R315-264-555, for CAMU-eligible waste shall be incorporated into the receiving facility permit through permit issuance or a permit modification, providing notice and an opportunity for comment and a hearing. Notwithstanding Subsection R315-270-4(a), a landfill may not receive hazardous CAMU-eligible waste under Section R315-264-555 unless its permit specifically authorizes receipt of such waste.

(e) For each remediation, CAMU-eligible waste may not be placed in an off-site landfill authorized to receive CAMU-eligible waste in accordance with Subsection R315-264-555(d) until the following additional conditions have been met:

(1) The landfill owner/operator notifies the Director and persons on the facility mailing list, maintained in accordance with Subsection R315-124-10(c)(1)(ix), of his or her intent to receive CAMU-eligible waste in accordance with Section R315-264-555; the notice shall identify the source of the remediation waste, the principal hazardous constituents in the waste, and treatment requirements.

(2) Persons on the facility mailing list may provide comments, including objections to the receipt of the CAMU-eligible waste, to the Director within 15 days of notification.

(3) The Director may object to the placement of the CAMU-eligible waste in the landfill within 30 days of notification; the Director may extend the review period an additional 30 days because of public concerns or insufficient information.

(4) CAMU-eligible wastes may not be placed in the landfill until the Director has notified the facility owner/operator that he or she does not object to its placement.

(5) If the Director objects to the placement or does not notify the facility owner/operator that he or she has chosen not to object, the facility may not receive the waste, notwithstanding Subsection R315-270-4(a), until the objection has been resolved, or the owner/operator obtains a permit modification in accordance with the procedures of Section R315-270-42 specifically authorizing receipt of the waste.

(6) As part of the permit issuance or permit modification process of Subsection R315-264-555(d), the Director may

modify, reduce, or eliminate the notification requirements of Subsection R315-264-555(e) as they apply to specific categories of CAMU-eligible waste, based on minimal risk.

(f) Generators of CAMU-eligible wastes sent off-site to a hazardous waste landfill under Section R315-264-555 shall comply with the requirements of Subsection R315-268-7(a)(4); off-site facilities treating CAMU-eligible wastes to comply with Section R315-264-555 shall comply with the requirements of Subsection R315-268-7(b)(4), except that the certification shall be with respect to the treatment requirements of Subsection R315-264-555(a)(2).

(g) For the purposes of Section R315-264-555 only, the "design of the CAMU" in Subsection R315-264-552(e)(4)(v)(E) means design of the permitted hazardous waste landfill.

R315-264-570. Drip Pads -- Applicability.

(a) The requirements of Sections R315-264-570 through 575 apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, and/or surface water run-off to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990 for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads. All other drip pads are new drip pads. The requirement at Subsection R315-264-573(b)(3) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992 except for those constructed after December 24, 1992 for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 24, 1992 for all HSWA drip pads or July 30, 1993 for all non-HSWA drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under Subsection R315-264-573(e) or Subsection R315-264-573(f), as appropriate.

(c) The requirements of Sections R315-264-570 through 575 are not applicable to the management of infrequent and incidental drippage in storage yards provided that:

(1) The owner or operator maintains and complies with a written contingency plan that describes how the owner or operator will respond immediately to the discharge of such infrequent and incidental drippage. At a minimum, the contingency plan shall describe how the owner or operator will do the following:

(i) Clean up the drippage;

(ii) Document the cleanup of the drippage;

(iii) Retain documents regarding cleanup for three years; and

(iv) Manage the contaminated media in a manner consistent with Utah regulations.

R315-264-571. Assessment of Existing Drip Pad Integrity.

(a) For each existing drip pad as defined in Subsection R315-264-570, the owner or operator shall evaluate the drip pad and determine whether it meets all of the requirements of Sections R315-264-570 through 575, except the requirements for liners and leak detection systems of Subsection R315-264-573(b). The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment shall be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of Section R315-264-573 are complete. The evaluation shall document the extent to which the drip pad meets each of the design and operating standards of Section R315-264-573, except the standards for liners and leak detection systems, specified in Subsection R315-264-573(b).

(b) The owner or operator shall develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of Subsection R315-264-573(b) and submit the plan to the Director no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan shall describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of Section R315-264-573. The plan shall be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator shall submit to the Director, the as-built drawings for the drip pad together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator shall comply with the provisions of Subsection R315-264-573(m) or close the drip pad in accordance with Section R315-264-575.

R315-264-572. Design and Installation of New Drip Pads.

Owners and operators of new drip pads shall ensure that the pads are designed, installed, and operated in accordance with one of the following:

(a) all of the requirements of Section R315-264-573, except 573(a)(4) and Subsections R315-264-574 and 575, or

(b) all of the requirements of Sections R315-264-573, except 573(b), 574 and 575.

R315-264-573. Design and Operating Requirements.

(a) Drip pads shall:

(1) Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4)(i) Have a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, e.g., existing concrete drip pads shall be sealed, coated, or covered with a surface material with a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system. This surface material shall be maintained free of cracks and gaps that could adversely affect its hydraulic conductivity, and the material shall be chemically compatible with the preservatives that contact the drip pad. The requirements of this provision apply only to existing drip pads and those drip pads for which the owner or operator elects to comply with Subsection R315-264-572(b) instead of Subsection R315-264-572(a).

(ii) The owner or operator shall obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment shall be reviewed, updated and recertified annually. The evaluation shall document the extent to which the drip pad meets the design and operating standards of Section R315-264-573, except for Subsection R315-264-573(b).

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: The Director will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute or the American Society of Testing and Materials in judging the structural integrity requirement of Subsection R315-264-573(a).

(b) If an owner/operator elects to comply with Subsection R315-264-572(a) instead of Subsection R315-264-572(b), the drip pad shall have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life, including the closure period, of the drip pad. The liner shall be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases 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 the waste or drip pad leakage to which they are exposed; climatic conditions; the stress of installation; and the stress of daily operation, including stresses from vehicular traffic on the drip pad;

(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 that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system shall be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad;

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad; and

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(3) A leakage collection system immediately above the liner that is designed, constructed, maintained and operated to collect leakage from the drip pad such that it can be removed from below the drip pad. The date, time, and quantity of any leakage collected in this system and removed shall be documented in the operating log.

(c) Drip pads shall be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See Subsection R315-264-573(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system shall be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in Subsection R315-264-570(b), the owner or operator shall design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-off that might enter the system.

(f) Unless protected by a structure or cover as described in Subsection R315-264-570(b), 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.

(g) The drip pad shall be evaluated to determine that it meets the requirements of Subsections R315-264-573(a) through (f) and the owner or operator shall obtain a statement from a qualified Professional Engineer certifying that the drip pad design meets the requirements of Section R315-264-573.

(h) Drippage and accumulated precipitation shall be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface shall be cleaned thoroughly in a manner and frequency such that accumulated residues of hazardous waste or other materials are removed, with residues being properly managed as hazardous waste, so as to allow weekly inspections of the entire drip pad surface without interference or hindrance from accumulated residues of hazardous waste or other materials on the drip pad. The owner or operator shall document the date and time of each cleaning and the cleaning procedure used in the facility's operating log. The owner/operator shall determine if the residues are hazardous as per Section R315-262-11 and, if so, shall manage them under Rules R315-261 through 268, 270, and section 3010 of RCRA.

(j) Drip pads shall be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes shall be held on the drip pad until drippage has ceased. The owner or operator shall maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems shall be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that may have caused or has caused a release of hazardous waste, the condition shall be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that may have caused or has caused a release of hazardous waste, e.g., upon detection of leakage in the leak detection system, the owner or operator shall:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps shall be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(iv) Within 24 hours after discovery of the condition, notify the Director of the condition and, within 10 working days, provide written notice to the Director with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(2) The Director shall review the information submitted, make a determination regarding whether the pad shall be removed from service completely or partially until repairs and cleanup are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and cleanup, the owner or operator shall notify the Director in writing and provide a

certification signed by an independent, qualified registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with Subsection R315-264-573(m)(1)(iv).

(n) Should a permit be necessary, the Director shall specify in the permit all design and operating practices that are necessary to ensure that the requirements of Section R315-264-573 are satisfied.

(o) The owner or operator shall maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This shall include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

R315-264-574. Inspections.

(a) During construction or installation, liners 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, liners shall be inspected and certified as meeting the requirements in Section R315-264-573 by a qualified Professional Engineer. This certification shall be maintained at the facility as part of the facility operating record. After installation, liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad 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) The presence of leakage in and proper functioning of leak detection system.

(3) Deterioration or cracking of the drip pad surface.

Note: See Section R315-264-573(m) for remedial action required if deterioration or leakage is detected.

R315-264-575. Closure.

(a) At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components, pad, liners, etc., contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(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 Subsection R315-264-575(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 closure and post-closure care requirements that apply to landfills, Section R315-264-310. For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purpose of closure, post-closure, and financial responsibility, such a drip pad is then considered to be landfill, and the owner or operator shall meet all of the requirements for landfills specified in Sections R315-264-110 through 120 and 140 through 151.

(c)(1) The owner or operator of an existing drip pad, as defined in Section R315-264-570, that does not comply with the liner requirements of Subsection R315-264-573(b)(1) shall:

(i) Include in the closure plan for the drip pad under Section R315-264-112 both a plan for complying with Subsection R315-264-575(a) and a contingent plan for complying with Subsection R315-264-575(b) in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under Section R315-264-118 for complying with Subsection R315-264-575(b) in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under Sections R315-264-112 and 144 for closure and post-closure care of a drip pad subject to Subsection R315-264-575(c) 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 Subsection R315-264-575(a).

R315-264-600. Miscellaneous Units -- Applicability.

The requirements in Sections R315-264-600 through 603 apply to owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units, except as Section R315-264-1 provides otherwise.

R315-264-601. Environmental Performance Standards.

A miscellaneous unit shall be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Permit terms and provisions shall include those requirements of Sections R315-264-170 through 179, 190 through 200, 220 through 232, 250 through 259, 270 through 283, 300 through 317, 340 through 351, 1030 through 1036, 1050 through 1065, 1080 through 1090, Rule 270, Subsection R307-214-2(39), and Rule R317-7 that are appropriate for the miscellaneous unit being permitted. Protection of human health and the environment includes, but is not limited to:

(a) Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in the ground water or subsurface environment, considering:

(1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;

(2) The hydrologic and geologic characteristics of the unit and the surrounding area;

(3) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;

(4) The quantity and direction of ground-water flow;

(5) The proximity to and withdrawal rates of current and potential ground-water users;

(6) The patterns of land use in the region;

(7) The potential for deposition or migration of waste constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation;

(8) The potential for health risks caused by human exposure to waste constituents; and

(9) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(b) Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in surface water, or wetlands or on the soil surface considering:

(1) The volume and physical and chemical characteristics of the waste in the unit;

(2) The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;

(3) The hydrologic characteristics of the unit and the surrounding area, including the topography of the land around the unit;

(4) The patterns of precipitation in the region;

(5) The quantity, quality, and direction of ground-water flow;

(6) The proximity of the unit to surface waters;

(7) The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;

(8) The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;

(9) The patterns of land use in the region;

(10) The potential for health risks caused by human exposure to waste constituents; and

(11) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

(c) Prevention of any release that may have adverse effects on human health or the environment due to migration of waste constituents in the air, considering:

(1) The volume and physical and chemical characteristics of the waste in the unit, including its potential for the emission and dispersal of gases, aerosols and particulates;

(2) The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;

(3) The operating characteristics of the unit;

(4) The atmospheric, meteorologic, and topographic characteristics of the unit and the surrounding area;

(5) The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

(6) The potential for health risks caused by human exposure to waste constituents; and

(7) The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

R315-264-602. Monitoring, Analysis, Inspection, Response, Reporting, and Corrective Action.

Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies shall ensure compliance with Sections R315-264-601, 15, 33, 75, 76, 77, and 101 as well as meet any additional requirements needed to protect human health and the environment as specified in the permit.

R315-264-603. Post-Closure Care.

A miscellaneous unit that is a disposal unit shall be maintained in a manner that complies with Section R315-264-601 during the post-closure care period. In addition, if a treatment or storage unit has contaminated soils or ground water that cannot be completely removed or decontaminated during closure, then that unit shall also meet the requirements of Section R315-264-601 during post-closure care. The post-closure plan under Section R315-264-118 shall specify the procedures that will be used to satisfy this requirement.

R315-264-1030. Air Emission Standards for Process Vents -- Applicability.

(a) The regulations in Sections R315-1030 through 1036 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes, except as provided in Section R315-264-1.

(b) Except for Subsections R315-264-1034(d) and (e), Sections R315-1030 through 1036 apply to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in one of the following:

(1) A unit that is subject to the permitting requirements of Rule R315-270, or

(2) A unit, including a hazardous waste recycling unit, that is not exempt from permitting under the provisions of Subsection R315-262-34(a), i.e., a hazardous waste recycling unit that is not a 90-day tank or container, and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Rule R315-270, or

(3) A unit that is exempt from permitting under the provisions of Subsection R315-262-34(a), i.e., a "90-day" tank or container, and is not a recycling unit under the provisions of Section R315-261-6.

(c) For the owner and operator of a facility subject to Sections R315-1030 through 1036 and who received a final permit under Section 19-6-108 prior to December 6, 1996, the requirements of Sections R315-1030 through 1036 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Section R315-124-15 or reviewed in accordance with the requirements of Subsection R315-270-50(d). Until such date when the owner and operator receive a final permit incorporating the requirements of Sections R315-1030 through 1036, the owner and operator are subject to the requirements of , which is adopted by reference,1030 through 1035, which is adopted by reference.

Note: The requirements of Sections R315-264-1032 through 1036 apply to process vents on hazardous waste recycling units previously exempt under Subsection R315-261-6(c)(1). Other exemptions under Section R315-261-4, and Subsection R35-264-1(g) are not affected by these requirements.

(d) The requirements of Sections R315-264-1030 through 1036 do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a permit issued pursuant to the Utah Air Conservation Act. The requirements of Sections R315-264-1030 through 1036 shall apply to the facility upon termination of the permit issued pursuant to the Utah Air Conservation Act.

(e) The requirements of Sections R315-264-1030 through 1036 do not apply to the process vents at a facility where the facility owner or operator certifies that all of the process vents that would otherwise be subject to Sections R315-264-1030 through 1036 are equipped with and operating air emission controls in accordance with the process vent requirements of an applicable regulation codified under the Utah Air Conservation Act. The documentation of compliance under regulations codified under the Utah Air Conservation Act shall be kept with, or made readily available with, the facility operating record.

R315-264-1031. Definitions.

As used in Sections R315-264-1030 through 1036, all terms not defined herein shall have the meaning given them in RCRA and Rules R315-260 through 266.

(a) Air stripping operation is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are

among the process configurations used for contacting the air and a liquid.

(b) Bottoms receiver means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

(c) Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(d) Condenser means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

(e) Connector means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

(f) Continuous recorder means a data-recording device recording an instantaneous data value at least once every 15 minutes.

(g) Control device means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale, e.g., a primary condenser on a solvent recovery unit, is not a control device.

(h) Control device shutdown means the cessation of operation of a control device for any purpose.

(i) Distillate receiver means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

(j) Distillation operation means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(k) Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

(l) Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by Sections R315-264-1030 through 1036.

(m) Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

(n) Flow indicator means a device that indicates whether gas flow is present in a vent stream.

(o) First attempt at repair means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

(p) Fractionation operation means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

(q) Hazardous waste management unit shutdown means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than 24 hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

(r) Hot well means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

(s) In gas/vapor service means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

(t) In heavy liquid service means that the piece of equipment is not in gas/vapor service or in light liquid service.

(u) In light liquid service means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals (kPa) at 20 degrees C, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 degrees C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

(v) In situ sampling systems means nonextractive samplers or in-line samplers.

(w) In vacuum service means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

(x) Malfunction means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

(y) Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

(z) Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

(aa) Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

(bb) Process vent means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

(cc) Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak.

(dd) Sampling connection system means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

(ee) Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

(ff) Separator tank means a device used for separation of two immiscible liquids.

(gg) Solvent extraction operation means an operation or method of separation in which a solid or solution is contacted with a liquid solvent, the two being mutually insoluble, to preferentially dissolve and transfer one or more components into the solvent.

(hh) Startup means the setting in operation of a hazardous waste management unit or control device for any purpose.

(ii) Steam stripping operation means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

(jj) Surge control tank means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

(kk) Thin-film evaporation operation means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

(ll) Vapor incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

(mm) Vented means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading, working losses, or by natural means such as diurnal temperature changes.

R315-264-1032. Standards: Process Vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of Subsection R315-264-1032(a) the closed-vent system and control device shall meet the requirements of Section R315-264-1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests shall conform with the requirements of Subsection R315-264-1034(c).

(d) When an owner or operator and the Director do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in Subsection R315-264-1034(c) shall be used to resolve the disagreement.

R315-264-1033. Standards: Closed-Vent Systems and Control Devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of Sections R315-264-1030 through 1036 shall comply with the provisions of Section R315-264-1033.

(2)(i) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of Sections R315-264-1030 through 1036 on the effective date that the facility becomes subject to the provisions of Sections R315-264-1030 through 1036 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to Sections R315-264-1030 through 1036 for installation and startup.

(ii) Any unit that begins operation after December 21, 1990, and is subject to the provisions of Sections R315-264-1030 through 1036 when operation begins, shall comply with the rules immediately, i.e., shall have control devices installed and operating on startup of the affected unit; the 30-month implementation schedule does not apply.

(iii) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to Sections R315-264-1030 through 1036 shall comply with all requirements of Sections R315-264-1030 through 1036 as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by Sections R315-264-1030 through 1036 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of Sections R315-264-1030 through 1036. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(iv) Owners and operators of facilities and units that become newly subject to the requirements of Sections R315-264-1030 through 1036 after December 8, 1997, due to an action other than those described in Subsection R315-264-1033(a)(2)(iii) shall comply with all applicable requirements immediately, i.e., shall have control devices installed and operating on the date the facility or unit becomes subject to Sections R315-264-1030 through 1036; the 30-month implementation schedule does not apply.

(b) A control device involving vapor recovery, e.g., a condenser or adsorber, shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of Subsection R315-264-1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device, e.g., a vapor incinerator, boiler, or process heater, shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 degrees C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in Subsection R315-264-1033(e)(1), except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in Subsection R315-264-1033(f)(2)(iii).

(3) A flare shall be used only if the net heating value of

the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in Subsection R315-264-1033(e)(2).

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-264-1033(e)(3), less than 18.3 m/s (60 ft/s), except as provided in Subsections R315-264-133(d)(4)(ii) and (iii).

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-264-1033(e)(3), equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in Subsection R315-264-1033(e)(3), less than the velocity, Vmax, as determined by the method specified in Subsection R315-264-1033(e)(4) and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, Vmax, as determined by the method specified in Subsection R315-264-1033(e)(5).

(6) A flare used to comply with Section R315-24-1033 shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of Sections R315-264-1030 through 1036. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

Ht = K times the summation product of Ci and Hi from i equals 1 to n

where:

Ht = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 degrees C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 degrees C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 degrees C;

Ci = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946-82, incorporated by reference as specified in Section R315-260-11; and

Hi = Net heat of combustion of sample component i, kcal/9 mol at 25 degrees C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382-83, incorporated by reference as specified in Section R315-260-11, if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate, in units of standard temperature and pressure, as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, Vmax, for a flare complying with Subsection R315-264-1033(d)(4)(iii) shall be determined by the following equation:

Log10(Vmax) = (HT+28.8)/31.7

where:

28.8 = Constant,

31.7 = Constant,

HT = The net heating value as determined in Subsection R315-264-1033(e)(2).

(5) The maximum allowed velocity in m/s, Vmax, for an air-assisted flare shall be determined by the following equation:

Vmax = 8.706+0.7084 (HT)

where:

8.706 = Constant,

0.7084 = Constant,

HT = The net heating value as determined in Subsection R315-264-1033(e)(2).

(f) The owner or operator shall monitor and inspect each control device required to comply with Section R315-264-1033 to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minus 1 percent of the temperature being monitored in degrees C or +/- 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of plus or minus 1 percent of the temperature being monitored in degrees C or +/- 0.5 degrees C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of plus or minus 1 percent of the temperature being monitored in degrees C or plus or minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature with an accuracy of plus or minus 1 percent of the temperature being monitored in degrees Celsius, or plus or minus 0.5 degrees C, whichever is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser exit, i.e., product

side.

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by Subsections R315-24-1033(f)(1) and (2) at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of Section R315-264-1033.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of Subsection R315-264-1035(b)(4)(iii)(F).

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of Subsection R315-264-1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of Subsection R315-264-1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) An owner or operator of an affected facility seeking to comply with the provisions of Rule R315-264 by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k) A closed-vent system shall meet either of the following design requirements:

(1) A closed-vent system shall be designed to operate with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background as determined by the procedure in Subsection R315-264-1034(b), and by visual inspections; or

(2) A closed-vent system shall be designed to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gauge or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the control device is operating.

(l) The owner or operator shall monitor and inspect each closed-vent system required to comply with Section R315-264-1033 to ensure proper operation and maintenance of the closed-vent system by implementing the following requirements:

(1) Each closed-vent system that is used to comply with Subsection R315-264-1033(k)(1) shall be inspected and monitored in accordance with the following requirements:

(i) An initial leak detection monitoring of the closed-vent system shall be conducted by the owner or operator on or before the date that the system becomes subject to Section R315-264-1033. The owner or operator shall monitor the closed-vent system components and connections using the procedures specified in Subsection R315-264-1034(b) to demonstrate that the closed-vent system operates with no detectable emissions, as indicated by an instrument reading of less than 500 ppmv above background.

(ii) After initial leak detection monitoring required in Subsection R315-264-1033(l)(1)(i), the owner or operator shall inspect and monitor the closed-vent system as follows:

(A) Closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed, e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange, shall be visually inspected at least once per year to check for defects that could result in air pollutant emissions. The owner or operator shall monitor a component or connection using the procedures specified in Subsection R315-264-1034(b) to demonstrate that it operates with no detectable emissions following any time the component is repaired or replaced, e.g., a section of damaged hard piping is replaced with new hard piping, or the connection is unsealed, e.g., a flange is unbolted.

(B) Closed-vent system components or connections other than those specified in Subsection R315-264-1033(l)(1)(ii)(A) shall be monitored annually and at other times as requested by the Director, except as provided for in Subsection R315-264-1033(o), using the procedures specified in Subsection R315-264-1034(b) to demonstrate that the components or connections operate with no detectable emissions.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect or leak in accordance with the requirements of Subsection R315-264-1033(l)(3).

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Subsection R315-264-1035.

(2) Each closed-vent system that is used to comply with Subsection R315-264-1033(k)(2) shall be inspected and monitored in accordance with the following requirements:

(i) The closed-vent system shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in ductwork or piping or loose connections.

(ii) The owner or operator shall perform an initial inspection of the closed-vent system on or before the date that the system becomes subject to Section R315-264-1033. Thereafter, the owner or operator shall perform the inspections at least once every year.

(iii) In the event that a defect or leak is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1033(l)(3).

(iv) The owner or operator shall maintain a record of the inspection and monitoring in accordance with the requirements specified in Subsection R315-264-1035.

(3) The owner or operator shall repair all detected defects as follows:

(i) Detectable emissions, as indicated by visual inspection, or by an instrument reading greater than 500 ppmv above background, shall be controlled as soon as

practicable, but not later than 15 calendar days after the emission is detected, except as provided for in Subsection R315-264-1033(l)(3)(iii).

(ii) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(iii) Delay of repair of a closed-vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be completed by the end of the next process unit shutdown.

(iv) The owner or operator shall maintain a record of the defect repair in accordance with the requirements specified in Section R315-264-1035.

(m) Closed-vent systems and control devices used to comply with provisions of Sections R315-264-1033 through 1036 shall be operated at all times when emissions may be vented to them.

(n) The owner or operator using a carbon adsorption system to control air pollutant emissions shall document that all carbon that is a hazardous waste and that is removed from the control device is managed in one of the following manners, regardless of the average volatile organic concentration of the carbon:

(1) Regenerated or reactivated in a thermal treatment unit that meets one of the following:

(i) The owner or operator of the unit has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-600 through 603; or

(ii) The unit is equipped with and operating air emission controls in accordance with the applicable requirements of Sections R315-264-1030 through 1036 and 1080 through 1090 or 40 CFR 265.1030 through 1035 and 1080 through 1090, which are adopted by reference; or

(iii) The unit is equipped with and operating air emission controls in accordance with a national emission standard for hazardous air pollutants under Section R315-307-214-1, which incorporates 40 CFR part 61 or Section R307-214-2, which incorporates 40 CFR part 63.

(2) Incinerated in a hazardous waste incinerator for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-340 through 351; or

(ii) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR 265.340 through 352, which are adopted by reference.

(3) Burned in a boiler or industrial furnace for which the owner or operator either:

(i) Has been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-266-100 through 112; or

(ii) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Sections R315-266-100 through 112.

(o) Any components of a closed-vent system that are designated, as described in Subsection R315-264-1035(c)(9), as unsafe to monitor are exempt from the requirements of Subsection R315-264-1033(l)(1)(ii)(B) if:

(1) The owner or operator of the closed-vent system determines that the components of the closed-vent system are unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-264-1033(l)(1)(ii)(B); and

(2) The owner or operator of the closed-vent system adheres to a written plan that requires monitoring the closed-vent system components using the procedure specified in Subsection R315-264-1033(l)(1)(ii)(B) as frequently as practicable during safe-to-monitor times.

R315-264-1034. Test Methods and Procedures.

(a) Each owner or operator subject to the provisions of Sections R315-264-1030 through 1036 shall comply with the test methods and procedures requirements provided in Section R315-264-1034.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in Subsection R315-264-1033(l), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with Subsection R315-264-1032(a) and with the total organic compound concentration limit of Subsection R315-264-1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 or Method 25A in 40 CFR part 60, appendix A, for organic content. If Method 25A is used, the organic HAP used as the calibration gas shall be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

(A) For sources utilizing Method 18.

The equation found in 40 CFR 264.1034(c)(1)(iv)(A), 2015 edition, is adopted and incorporated by reference.

Where:

Eh = Total organic mass flow rate, kg/h;

Q2sd = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

Ci = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MWi = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m3, at 293 K and 760 mm Hg;

10^{-6} = Conversion from ppm

(B) For sources utilizing Method 25A.

$Eh = (Q)(C)(MW)(0.0416)(10^{-6})$

Where:

Eh = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = Conversion factor for molar volume, kg-mol/m3, at 293 K and 760 mm Hg;

10^{-6} = Conversion from ppm.

(v) The annual total organic emission rate shall be determined by the following equation:

EA = (Eh)(H)

where:

EA = Total organic mass emission rate, kg/y;

Eh = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates, Eh as determined in Subsection R315-264-1034(c)(1)(iv), and by summing the annual total organic mass emission rates, EA, as determined in Subsection R315-264-1034(c)(1)(v), for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in Subsection R315-264-1034(c)(1).

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs shall be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of Sections R315-264-1030 through 1036, the owner or operator shall make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator shall take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples shall be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples shall be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, or analyzed for its individual organic constituents.

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of Sections R315-264-1030 through 1036 or by the date when the waste is first managed in a waste management unit, whichever is later, and

(2) For continuously generated waste, annually, or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Director do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the dispute may be resolved by using direct measurement as specified at Subsection R315-264-1034(d)(1).

R315-264-1035. Recordkeeping Requirements.

(a)(1) Each owner or operator subject to the provisions of Sections R315-264-1030 through 1036 shall comply with the recordkeeping requirements of Section R315-264-1035.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of Sections R315-264-1030 through 1036 may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators shall record the following information in the facility operating record:

(1) For facilities that comply with the provisions of Subsection R315-264-1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule shall also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule shall be in the facility operating record by the effective date that the facility becomes subject to the provisions of Sections R315-264-1030 through 1036.

(2) Up-to-date documentation of compliance with the process vent standards in Section R315-264-1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility, i.e., the total emissions for all affected vents at the facility, and the approximate location within the facility of each affected unit, e.g., identify the hazardous waste management units on a facility plot plan.

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions shall be made using operating parameter values, e.g., temperatures, flow rates, or vent stream organic compounds and concentrations, that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action, e.g., managing a waste of different composition or increasing operating hours of affected waste management units, that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan shall include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with Section R315-264-1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records, including the dates, of each compliance test required by Subsection R315-264-1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions," incorporated by reference as specified in Section R315-260-11, or other engineering texts acceptable to the Director that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsections R315-264-1035(b)(4)(iii)(A) through (b)(4)(iii)(G) may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in Subsection R315-264-1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon

replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of Subsection R315-264-1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of Subsection R315-264-1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Rule R315-264 shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with Subsections R315-264-1033(f)(1) and (f)(2).

(3) Monitoring, operating, and inspection information required by Subsections R315-264-1033(f) through (k).

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 degrees C, period when the combustion temperature is below 760 degrees C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater, period when the combustion zone temperature is more than 28 degrees C below the design average combustion zone temperature established as a requirement of Subsection R315-264-1035(b)(4)(iii)(A).

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 degrees C below the average temperature of the inlet vent stream established as a requirement of Subsection R315-264-1035(b)(4)(iii)(B), or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of Subsection R315-264-1035(b)(4)(iii)(B).

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 degrees C below the design average flame zone temperature established as a requirement of Subsection R315-264-1035(b)(4)(iii)(C), or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of Subsection R315-264-1035(b)(4)(iii)(C).

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with Subsection R315-264-1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of Subsection R315-264-1035(b)(4)(iii)(E).

(vii) For a condenser that complies with Subsection R315-264-1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 degrees C above the design average exhaust vent stream temperature established as a requirement of Subsection R315-264-1035(b)(4)(iii)(E); or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 degrees C above the design average coolant fluid temperature at the condenser outlet established as a requirement of Subsection R315-264-1035(b)(4)(iii)(E).

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Subsection R315-264-1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of Subsection R315-264-1035(b)(4)(iii)(F).

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with Subsection R315-264-1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of Subsection R315-264-1035(b)(4)(iii)(F).

(5) Explanation for each period recorded under Subsection R315-264-1035(4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in Subsection R315-264-1033(g) or (h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in Subsection R315-264-1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(9) An owner or operator designating any components of a closed-vent system as unsafe to monitor pursuant to Subsection R315-264-1033(o) shall record in a log that is kept in the facility operating record the identification of closed-vent system components that are designated as unsafe to monitor in accordance with the requirements of Subsection R315-264-1033(o), an explanation for each closed-vent system component stating why the closed-vent system component is unsafe to monitor, and the plan for monitoring each closed-vent system component.

(10) When each leak is detected as specified in Subsection R315-264-1033(l), the following information shall be recorded:

(i) The instrument identification number, the closed-vent system component identification number, and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) Maximum instrument reading measured by Method

21 of 40 CFR part 60, appendix A after it is successfully repaired or determined to be nonrepairable.

(v) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(B) If delay of repair was caused by depletion of stocked parts, there shall be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(d) Records of the monitoring, operating, and inspection information required by Subsections R315-264-1035(c)(3) through (c)(10) shall be maintained by the owner or operator for at least 3 years following the date of each occurrence, measurement, maintenance, corrective action, or record.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in Section R315-264-1032 including supporting documentation as required by Subsection R315-264-1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

R315-264-1036. Reporting Requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of Sections R315-264-1030 through 1036 to the Director by dates specified by the Director. The report shall include the following information:

(1) The Environmental Protection Agency identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period, dates when the control device exceeded or operated outside of the design specifications as defined in Subsection R315-264-1035(c)(4) and as indicated by the control device monitoring required by Subsection R315-264-1033(f) and such exceedances were not corrected within 24 hours, or that a flare operated with visible emissions as defined in Subsection R315-264-1033(d) and as determined by Method 22 monitoring, the duration and cause of each exceedance or visible emissions, and any corrective measures taken.

(b) If, during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications as defined in Subsection R315-264-264-1035(c)(4) for more than 24 hours or a flare does not operate with visible emissions as defined in Subsection R315-264-264-1033(d), a report to the Director is not required.

R315-264-1050. Air Emission Standards for Equipment Leaks -- Applicability.

(a) The regulations in Sections R315-264-1050 through 1065 apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes, except as provided in Section R315-264-1.

(b) Except as provided in Subsection R315-264-1064(k), Sections R315-264-1050 through 1065 apply to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in one of the following:

(1) A unit that is subject to the permitting requirements of Rule R315-270, or

(2) A unit, including a hazardous waste recycling unit, that is not exempt from permitting under the provisions of Subsection R315-262-34(a), i.e., a hazardous waste recycling unit that is not a "90-day" tank or container, and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of Rule R315-270, or

(3) A unit that is exempt from permitting under the provisions of Subsection R315-262-34(a), i.e., a "90-day" tank or container, and is not a recycling unit under the provisions of Section R315-261-6.

(c) For the owner or operator of a facility subject to Sections R315-264-1050 through 1065 and who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of Sections R315-264-1050 through 1065 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Section R315-124-15 or reviewed in accordance with the requirements of Subsection R315-270-50(d). Until such date when the owner or operator receives a final permit incorporating the requirements of Sections R315-264-1050 through 1065, the owner or operator is subject to the requirements of 40 CFR 265.1050 through 1064, which are adopted by reference.

(d) Each piece of equipment to which Sections R315-264-1050 through 1065 applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is excluded from the requirements of Sections R315-264-1052 to 1060 if it is identified as required in Subsection R315-264-1064(g)(5).

(f) Equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year is excluded from the requirements of Sections R315-264-1052 through 1060 if it is identified, as required in Subsection R315-264-1064(g)(6).

(g) The requirements of Sections R315-264-1050 through 1065 do not apply to the pharmaceutical manufacturing facility, commonly referred to as the Stonewall Plant, located at Route 340 South, Elkton, Virginia, provided that facility is operated in compliance with the requirements contained in a permit issued pursuant to the Utah Air Conservation Act. The requirements of Sections R315-264-1050 through 1065 shall apply to the facility upon termination of the permit issued pursuant to the Utah Air Conservation Act.

(h) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at R307-214-2(61), which incorporates 40 CFR part 63 subpart IIII, are not subject to the requirements of Sections R315-264-1050 through 1065.

Note: The requirements of Sections R315-264-1052 through 1065 apply to equipment associated with hazardous waste recycling units previously exempt under Subsection R315-261-6(c)(1). Other exemptions under Section R315-261-4, and Subsection R315-264-1(g) are not affected by these requirements.

R315-264-1051. Definitions.

As used in Sections R315-264-1050 through 1065, all terms shall have the meaning given them in Section R315-264-1031, RCRA, and Rules R315-260 through 266.

R315-264-1052. Standards: Pumps in Light Liquid Service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in

Subsection R315-264-1063(b), except as provided in Subsections R315-264-1052(d), (e), and (f).

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-264-1059.

(2) A first attempt at repair, e.g., tightening the packing gland, shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of Subsection R315-264-1052(a), provided the following requirements are met:

(1) Each dual mechanical seal system shall be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of Section R315-264-1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system shall not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump shall be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in Subsection R315-264-1052(d)(3) shall be checked daily or be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly.

(ii) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in Subsection R315-264-1052(d)(5)(ii), a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-264-1059.

(iii) A first attempt at repair, e.g., relapping the seal, shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in Subsection R315-264-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsections R315-264-1052(a), (c), and (d) if the pump meets the following requirements:

(1) Shall have no externally actuated shaft penetrating the pump housing.

(2) Shall operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in Subsection R315-264-1063(c).

(3) Shall be tested for compliance with Subsection R315-264-1052(e)(2) initially upon designation, annually, and at other times as requested by the Director.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of Section R315-264-1060, it is exempt from the requirements of Subsections R315-264-1052(a) through (e).

R315-264-1053. Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in Subsections R315-264-1053(h) and (i).

(b) Each compressor seal system as required in Subsection R315-264-1053(a) shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of Section R315-264-1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(c) The barrier fluid shall not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in Subsections R315-264-1053(a) through (c) shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in Subsection R315-264-1053(d) shall be checked daily or shall be equipped with an audible alarm that shall be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor shall be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under Subsection R315-264-1053(e)(2), a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-264-1059.

(2) A first attempt at repair, e.g., tightening the packing gland, shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of Subsections R315-264-1053(a) and (b) if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of Section R315-264-1060, except as provided in Subsection R315-264-1053(i).

(i) Any compressor that is designated, as described in Subsection R315-264-1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of Subsections R315-264-1053(a) through (h) if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-264-1063(c).

(2) Is tested for compliance with Subsection R315-264-1053(i)(1) initially upon designation, annually, and at other times as requested by the Director.

R315-264-1054. Standards: Pressure Relief Devices in Gas/Vapor Service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-264-1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in Section R315-264-1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in Subsection R315-264-1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in Section R315-264-264-1060 is exempt from the requirements of Subsection R315-264-1054(a) and (b).

R315-264-1055. Standards: Sampling Connection Systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system. This system shall collect the sample purge for return to the process or for routing to the appropriate treatment system. Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in Subsection R315-264-1055(a) shall meet one of the following requirements:

(1) Return the purged process fluid directly to the process line;

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a waste management unit that complies with the applicable requirements of Sections R315-264-1084 through 1086 or a control device that complies with the requirements of Section R315-264-1060.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of Subsections R315-264-1055(a) and (b).

R315-264-1056. Standards: Open-Ended Valves or Lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with Subsection R315-264-1056(a) at all other times.

R315-264-1057. Standards: Valves in Gas/Vapor Service or in Light Liquid Service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in Subsection R315-264-1063(b) and shall comply with Subsections R315-264-1057(b) through (e), except as provided in Subsections R315-264-1057(f), (g), and (h), and Sections R315-264-1061 and 1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months,

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in Section R315-264-1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in Subsection R315-264-1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Subsection R315-264-1057(a) if the valve:

(1) Has no external actuating mechanism in contact with the hazardous waste stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in Subsection R315-264-1063(c).

(3) Is tested for compliance with Subsection R315-264-1057(f)(2) initially upon designation, annually, and at other times as requested by the Director.

(g) Any valve that is designated, as described in Subsection R315-264-1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of Subsection R315-264-1057(a) if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with Subsection R315-264-1057(a).

(2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in Subsection R315-264-1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of Subsection R315-264-1057(a) if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

R315-264-1058. Standards: Pumps and Valves in Heavy Liquid Service, Pressure Relief Devices in Light Liquid or Heavy Liquid Service, and Flanges and Other Connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days

by the method specified in Subsection R315-264-1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in Section R315-264-1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under Subsection R315-264-1057(e).

(e) Any connector that is inaccessible or is ceramic or ceramic-lined, e.g., porcelain, glass, or glass-lined, is exempt from the monitoring requirements of Subsection R315-264-1058(a) and from the recordkeeping requirements of Section R315-264-1064.

R315-264-1059. Standards: Delay of Repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with Section R315-264-1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than 6 months after the first hazardous waste management unit shutdown.

R315-264-1060. Standards: Closed-Vent Systems and Control Devices.

(a) Owners and operators of closed-vent systems and control devices subject to Sections R315-264-1050 through 1065 shall comply with the provisions of Section R315-264-1033.

(b)(1) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of Sections R315-264-1050 through 1065 on the effective date that the facility becomes subject to the provisions of Sections R315-264-1050 through 1065 shall prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls shall be installed as soon as possible, but the implementation schedule may allow up to 30 months after the effective date that the facility becomes subject to Sections R315-264-1050 through 1065 for installation and startup.

(2) Any unit that begins operation after December 21, 1990, and is subject to the provisions of Sections R315-264-1050 through 1065 when operation begins, shall comply with the rules immediately, i.e., shall have control devices installed and operating on startup of the affected unit; the 30-month implementation schedule does not apply.

(3) The owner or operator of any facility in existence on the effective date of a statutory or regulatory amendment that renders the facility subject to Sections R315-264-1050 through 1065 shall comply with all requirements of Sections R315-264-1050 through 1065 as soon as practicable but no later than 30 months after the amendment's effective date. When control equipment required by Sections R315-264-1050 through 1065 cannot be installed and begin operation by the effective date of the amendment, the facility owner or operator shall prepare an implementation schedule that includes the following information: Specific calendar dates for award or contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of Sections R315-264-1050 through 1065. The owner or operator shall enter the implementation schedule in the operating record or in a permanent, readily available file located at the facility.

(4) Owners and operators of facilities and units that become newly subject to the requirements of Sections R315-264-1050 through 1065 after December 8, 1997, due to an action other than those described in Subsection R315-264-1060(b)(3) shall comply with all applicable requirements immediately, i.e., shall have control devices installed and operating on the date the facility or unit becomes subject to Sections R315-264-1050 through 1065; the 30-month implementation schedule does not apply.

R315-264-1061. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Percentage of Valves Allowed to Leak.

(a) An owner or operator subject to the requirements of Section R315-264-1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) A performance test as specified in Section R315-264-1061(c) shall be conducted initially upon designation, annually, and at other times requested by the Director.

(2) If a valve leak is detected, it shall be repaired in accordance with Subsections R315-264-1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in Section R315-264-1057 within the hazardous waste management unit shall be monitored within 1 week by the methods specified in Subsection R315-264-1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in Section R315-264-1057 for which leaks are detected by the total number of valves subject to the requirements in Section R315-264-1057 within the hazardous waste management unit.

R315-264-1062. Alternative Standards for Valves in Gas/Vapor Service or in Light Liquid Service: Skip Period Leak Detection and Repair.

(a) An owner or operator subject to the requirements of Section R315-264-1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in Subsections R315-264-1062(b)(2) and (3).

(b)(1) An owner or operator shall comply with the requirements for valves, as described in Section R315-264-1057, except as described in Subsections R315-264-1062(b)(2) and (b)(3).

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods, i.e., monitor for leaks once every six months, for the valves subject to the requirements in Section R315-264-1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods, i.e., monitor for leaks once every year, for the valves subject to the requirements in Section R315-264-1057.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operator shall monitor monthly in compliance with the requirements in Section R315-264-1057, but may again elect to use Section R315-264-1062 after meeting the requirements of Section R315-264-1057(c)(1).

R315-264-1063. Test Methods and Procedures.

(a) Each owner or operator subject to the provisions of Rule R315-264 shall comply with the test methods and procedures requirements provided in Section R315-264-1063.

(b) Leak detection monitoring, as required in Sections R315-264-1052 through 1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air, less than 10 ppm of hydrocarbon in air.

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in Subsections R315-264-1052(e), 1053(i), 1054, and 1057(f), the test shall comply with the following requirements:

(1) The requirements of Subsections R315-264-1063(b)(1) through (4) shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by Subsection R315-264-13(b), an owner or operator of a facility shall determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85, incorporated by reference under Section R315-260-11);

(2) Method 9060A, incorporated by reference under Section R315-260-11, of "Test Methods for Evaluating Solid Waste," EPA Publication SW-846, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

(3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in Subsections R315-264-1063(d)(1) or (d)(2).

(f) When an owner or operator and the Director do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in Subsections R315-264-1063(d)(1) or (d)(2) can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D-2879-86, incorporated by reference under Section R315-260-11.

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of Sections R315-264-1034(c)(1) through (c)(4).

R315-264-1064. Recordkeeping Requirements.

(a)(1) Each owner or operator subject to the provisions of Sections R315-264-1050 through 1065 shall comply with the recordkeeping requirements of Section R315-264-1064.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of Sections R315-264-1050 through 1065 may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators shall record the following information in the facility operating record:

(1) For each piece of equipment to which Sections R315-264-1050 through 1065 apply:

(i) Equipment identification number and hazardous waste management unit identification.

(ii) Approximate locations within the facility, e.g., identify the hazardous waste management unit on a facility

plot plan.

(iii) Type of equipment, e.g., a pump or pipeline valve.

(iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.

(v) Hazardous waste state at the equipment, e.g., gas/vapor or liquid.

(vi) Method of compliance with the standard, e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals."

(2) For facilities that comply with the provisions of Subsection R315-264-1033(a)(2), an implementation schedule as specified in Subsection R315-264-1033(a)(2).

(3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in Subsection R315-264-1035(b)(3).

(4) Documentation of compliance with Section R315-264-1060, including the detailed design documentation or performance test results specified in Subsection R315-264-1035(b)(4).

(c) When each leak is detected as specified in Sections R315-264-1052, 1053, 1057, and 1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with Subsection R315-264-1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in Subsection R315-264-1057(c) and no leak has been detected during those 2 months.

(d) When each leak is detected as specified in Subsections R315-264-1052, 1053, 1057, and 1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with Subsection R315-264-1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in Subsection R315-264-1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with Subsection R315-264-1059(c).

(8) The signature of the owner or operator, or designate, whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of Section R315-264-1060 shall be recorded and kept up-to-date in the facility operating record as specified in Subsection R315-264-1035(c). Design documentation is specified in Subsection R315-264-1035(c)(1) and (c)(2) and monitoring, operating, and inspection information in Subsection R315-264-1035(c)(3)through (c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Director shall specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in Sections R315-264-1052 through 1060 shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for equipment, except welded fittings, subject to the requirements of Sections R315-264-1050 through 1065.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of Subsections R315-264-1052(e), 1053(i), and 1057(f).

(ii) The designation of this equipment as subject to the requirements of Subsections R315-264-1052(e), 1053(i), or 1057(f) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with Subsection R315-264-1054(a).

(4)(i) The dates of each compliance test required in Subsections R315-264-1052(e), 1053(i), 1054, and 1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Identification, either by list or location, area or group, of equipment that contains or contacts hazardous waste with an organic concentration of at least 10 percent by weight for less than 300 hours per calendar year.

(h) The following information pertaining to all valves subject to the requirements of Subsections R315-264-1057 (g) and (h) shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with Section R315-264-1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

(1) Criteria required in Subsections R315-264-1052(d)(5)(ii) and 1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of Sections R315-264-1050 through 1065 and other specific sections of Rule R315-264:

(1) An analysis determining the design capacity of the hazardous waste management unit.

(2) A statement listing the hazardous waste influent to

and effluent from each hazardous waste management unit subject to the requirements in Subsections R315-264-1052 through 1060 and an analysis determining whether these hazardous wastes are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in Subsections R315-264-1052 through 1060. The record shall include supporting documentation as required by Subsection R315-264-1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action, e.g., changing the process that produced the waste, that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in Sections R315-264-1052 through 1060, then a new determination is required.

(l) Records of the equipment leak information required by Subsection R315-264-1064(d) and the operating information required by Subsection R315-264-1064(e) need be kept only 3 years.

(m) The owner or operator of a facility with equipment that is subject to Sections R315-264-1050 through 1065 and to regulations at 40 CFR part 60, part 61, or part 63 may elect to determine compliance with Sections R315-264-1050 through 1065 either by documentation pursuant to Section R315-264-1064, or by documentation of compliance with the regulations at 40 CFR part 60, part 61, or part 63 pursuant to the relevant provisions of the regulations at 40 part 60, part 61, or part 63. The documentation of compliance under regulations at 40 CFR part 60, part 61, or part 63 shall be kept with or made readily available with the facility operating record.

R315-264-1065. Reporting Requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of Sections R315-264-1050 through 1065 to the Director by dates specified by the Director. The report shall include the following information:

(1) The Environmental Protection Agency identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period:

(i) The equipment identification number of each valve for which a leak was not repaired as required in Subsection R315-264-1057(d).

(ii) The equipment identification number of each pump for which a leak was not repaired as required in Subsections R315-264-1052(c) and (d)(6).

(iii) The equipment identification number of each compressor for which a leak was not repaired as required in Subsection R315-264-1053(g).

(3) Dates of hazardous waste management unit shutdowns that occurred within the semiannual reporting period.

(4) For each month during the semiannual reporting period, dates when the control device installed as required by Sections R315-264-1052, 1053, 1054, or 1055 exceeded or operated outside of the design specifications as defined in Subsection R315-264-1064(e) and as indicated by the control device monitoring required by Section R315-264-1060 and was not corrected within 24 hours, the duration and cause of each exceedance, and any corrective measures taken.

(b) If, during the semiannual reporting period, leaks from valves, pumps, and compressors are repaired as required in Subsections R315-264-1057(d), 1052(c) and (d)(6), and 1053(g), respectively, and the control device does not exceed or operate outside of the design specifications as defined in Subsection R315-264-1064(e) for more than 24 hours, a report to the Director is not required.

R315-264-1080. Air Emission Standards for Tanks, Surface Impoundments, and Containers -- Applicability.

(a) The requirements of Sections R315-264-1080 through 1090 apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either Sections R315-264-170 through 179, 190 through 200, or 220 through 232 except as Section R315-264-1 and Subsection R315-264-1080(b) provide otherwise.

(b) The requirements of Sections R315-264-1080 through 1090 do not apply to the following waste management units at the facility:

(1) A waste management unit that holds hazardous waste placed in the unit before December 6, 1996, and in which no hazardous waste is added to the unit on or after December 6, 1996.

(2) A container that has a design capacity less than or equal to 0.1 cubic meter.

(3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(4) A surface impoundment in which an owner or operator has stopped adding hazardous waste, except to implement an approved closure plan, and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or Utah authorities.

(6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(7) A hazardous waste management unit that the owner or operator certifies is equipped with and operating air emission controls in accordance with the requirements of an applicable regulation codified under the Utah Air Conservation Act. For the purpose of complying with Subsection R315-264-1080(b), a tank for which the air emission control includes an enclosure, as opposed to a cover, shall be in compliance with the enclosure and control device requirements of Subsection R315-264-1084(i), except as provided in Subsection R315-264-1082(c)(5).

(8) A tank that has a process vent as defined in Section R315-264-1031.

(c) For the owner and operator of a facility subject to Sections R315-264-1080 through 1090 who received a final permit under RCRA section 3005 prior to December 6, 1996, the requirements of Sections R315-264-1080 through 1090 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Section R315-124-15 or reviewed in accordance with the requirements of Subsection R315-270-50(d). Until such date when the permit is reissued in accordance with the requirements of Section R315-124-15 or reviewed in accordance with the requirements of Subsection R315-270-50(d), the owner and operator are subject to the requirements of 40 CFR 265.1080 through 1090, which are adopted by reference.

(d) The requirements of Sections R315-264-1080 through 1090, except for the recordkeeping requirements specified in Subsection R315-264-1089(i), are

administratively stayed for a tank or a container used for the management of hazardous waste generated by organic peroxide manufacturing and its associated laboratory operations when the owner or operator of the unit meets all of the following conditions:

(1) The owner or operator identifies that the tank or container receives hazardous waste generated by an organic peroxide manufacturing process producing more than one functional family of organic peroxides or multiple organic peroxides within one functional family, that one or more of these organic peroxides could potentially undergo self-accelerating thermal decomposition at or below ambient temperatures, and that organic peroxides are the predominant products manufactured by the process. For the purpose of meeting the conditions of Section R315-264-1080, "organic peroxide" means an organic compound that contains the bivalent structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(2) The owner or operator prepares documentation, in accordance with the requirements of Subsection R315-264-1089(i), explaining why an undue safety hazard would be created if air emission controls specified in Sections R315-264-1084 through 1087 are installed and operated on the tanks and containers used at the facility to manage the hazardous waste generated by the organic peroxide manufacturing process or processes meeting the conditions of Subsection R315-264-1080(d)(1).

(3) The owner or operator notifies the Director in writing that hazardous waste generated by an organic peroxide manufacturing process or processes meeting the conditions of Subsection R315-264-1080(d)(1) are managed at the facility in tanks or containers meeting the conditions of Subsection R315-264-1080(d)(2). The notification shall state the name and address of the facility, and be signed and dated by an authorized representative of the facility owner or operator.

R315-264-1081. Definitions.

As used in Sections R315-264-1080 through 1090, all terms shall have the meaning given to them in 40 CFR 265.1081, which is adopted by reference; RCRA; and Rules R315-260 through 266.

R315-264-1082. Standards: General.

(a) Section R315-264-1082 applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to Sections R315-264-1080 through 1090.

(b) The owner or operator shall control air pollutant emissions from each hazardous waste management unit in accordance with standards specified in Sections R315-264-1084 through 1087, as applicable to the hazardous waste management unit, except as provided for in Subsection R315-264-1082(c).

(c) A tank, surface impoundment, or container is exempt from standards specified in Sections R315-264-1084 through 1087, as applicable, provided that the waste management unit is one of the following:

(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in Subsection R315-264-1083(a). The owner or operator shall review and update, as necessary, this determination at least once every 12 months following the date of the initial determination for the hazardous waste streams entering the unit.

(2) A tank, surface impoundment, or container for which the organic content of all the hazardous waste entering the waste management unit has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (Ct) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in Subsection R315-264-1083(b).

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 100 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in Subsection R315-264-1083(b).

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is equal to or greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in Subsection R315-264-1083(b).

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (Rbio) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined using the procedures specified in Subsection R315-264-1083(b).

(B) The total actual organic mass biodegradation rate (MRbio) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in Subsection R315-264-1083(b).

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) From the point of waste origination through the point where the hazardous waste enters the treatment process, the hazardous waste is managed continuously in waste management units which use air emission controls in accordance with the standards specified in Sections R315-264-1084 through 1087, as applicable to the waste management unit.

(B) From the point of waste origination through the point where the hazardous waste enters the treatment process, any transfer of the hazardous waste is accomplished through continuous hard-piping or other closed system transfer that does not allow exposure of the waste to the atmosphere. The Director considers a drain system that meets the requirements of Subsection R307-214-2(29), which incorporates 40 CFR part 63, subpart RR-National Emission Standards for Individual Drain Systems to be a closed system.

(C) The average VO concentration of the hazardous

waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual waste streams entering the process or 500 ppmw, whichever value is lower. The average VO concentration of each individual waste stream at the point of waste origination shall be determined using the procedures specified in Subsection R315-264-1083(a). The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in Subsection R315-264-1083(b).

(vi) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent and the owner or operator certifies that the average VO concentration at the point of waste origination for each of the individual waste streams entering the process is less than 10,000 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste origination shall be determined using the procedures specified in Subsections R315-264-1083(b) and 1083(a), respectively.

(vii) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-264-340 through 351; or

(B) Has designed and operates the incinerator in accordance with the interim status requirements of 40 CFR 265.340 through 352, which are adopted by reference.

(viii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under Rule R315-270 which implements the requirements of Sections R315-266-100 through 112, or

(B) Has designed and operates the boiler or industrial furnace in accordance with the interim status requirements of Sections R315-266-100 through 112.

(ix) For the purpose of determining the performance of an organic destruction or removal process in accordance with the conditions in each of Subsections R315-264-1082(c)(2)(i) through (c)(2)(vi), the owner or operator shall account for VO concentrations determined to be below the limit of detection of the analytical method by using the following VO concentration:

(A) If Method 25D in 40 CFR part 60, appendix A is used for the analysis, one-half the blank value determined in the method at section 4.4 of Method 25D in 40 CFR part 60, appendix A, or a value of 25 ppmw, whichever is less.

(B) If any other analytical method is used, one-half the sum of the limits of detection established for each organic constituent in the waste that has a Henry's law constant value at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X), which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m3, at 25 degrees Celsius.

(3) A tank or surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of Subsection R315-264-1082(c)(2)(iv).

(4) A tank, surface impoundment, or container for which all hazardous waste placed in the unit either:

(i) Meets the numerical concentration limits for organic hazardous constituents, applicable to the hazardous waste, as specified in Section R315-268-40-Land Disposal Restrictions under Table "Treatment Standards for Hazardous Waste;" or

(ii) The organic hazardous constituents in the waste have been treated by the treatment technology established by the Board for the waste in Subsection R315-268-42(a), or have been removed or destroyed by an equivalent method of treatment approved by EPA pursuant to 40 CFR 268.42(b).

(5) A tank used for bulk feed of hazardous waste to a waste incinerator and all of the following conditions are met:

(i) The tank is located inside an enclosure vented to a control device that is designed and operated in accordance with all applicable requirements specified under Section R315-214-1, which incorporates 40 CFR part 61, subpart FF-National Emission Standards for Benzene Waste Operations for a facility at which the total annual benzene quantity from the facility waste is equal to or greater than 10 megagrams per year;

(ii) The enclosure and control device serving the tank were installed and began operation prior to November 25, 1996 and

(iii) The enclosure is designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical or electrical equipment; or to direct air flow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" annually.

(d) The Director may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of Section R315-264-1082 as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of Subsection R315-264-1083(a). The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of Subsection R315-264-1083(b).

(2) In performing a waste determination pursuant to Subsection R315-264-1082(d)(1), the sample preparation and analysis shall be conducted as follows:

(i) In accordance with the method used by the owner or operator to perform the waste analysis, except in the case specified in Subsection R315-264-1082(d)(2)(ii).

(ii) If the Director determines that the method used by the owner or operator was not appropriate for the hazardous waste managed in the tank, surface impoundment, or container, then the Director may choose an appropriate method.

(3) In a case when the owner or operator is requested to perform the waste determination, the Director may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(4) In a case when the results of the waste determination performed or requested by the Director do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of Subsection R315-264-1082(d)(1) shall be used to establish compliance with the requirements of Sections R315-264-1080 through 1090.

(5) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Director may elect to establish compliance with Sections R315-264-1080 through 1090 by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous

waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of Subsection R315-264-1083(a).

(ii) Results of the waste determination performed or requested by the Director showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 500 ppmw shall constitute noncompliance with Sections R315-264-1080 through 1090 except in a case as provided for in Subsection R315-264-1082(d)(5)(iii).

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 500 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 500 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste, e.g., test results, measurements, calculations, and other documentation, and recorded in the facility records in accordance with the requirements of Subsections R315-264-1083(a) and Section R315-264-1089 shall be considered by the Director together with the results of the waste determination performed or requested by the Director in establishing compliance with Sections R315-264-1080 through 1090.

R315-264-1083. Waste Determination Procedures.

(a) Waste determination procedure to determine average volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of Subsection R315-264-1082(c)(1) from using air emission controls in accordance with standards specified in Sections R315-264-1084 through 1087, as applicable to the waste management unit.

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of Subsection R315-264-1082(c)(1) from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in Section R315-264-1082.

(2) For a waste determination that is required by Subsection R315-264-1083(a)(1), the average VO concentration of a hazardous waste at the point of waste origination shall be determined in accordance with the procedures specified in 40 CFR 265.1084(a)(2) through (a)(4), which are adopted by reference.

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of Subsections R315-264-1082(c)(2)(i) through (c)(2)(vi) from using air emission controls in accordance with standards specified in Sections R315-264-1084 through 1087, as applicable to the waste management unit.

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in Subsection R315-264-1082(c)(2) are not achieved.

(2) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in 40 CFR 265.1084(b)(2) through (b)(9), which are adopted by reference, as applicable to the treated hazardous waste.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using Tank Level 1 controls in accordance with standards specified in Subsection R315-264-1084(c).

(2) The maximum organic vapor pressure of the hazardous waste may be determined in accordance with the procedures specified in 40 CFR 265.1084(c)(2) through (c)(4), which are adopted by reference.

(d) The procedure for determining no detectable organic emissions for the purpose of complying with Sections R315-264-1080 through 1090 shall be conducted in accordance with the procedures specified in 40 CFR 265.1084(d), which is adopted by reference.

R315-264-1084. Standards: Tanks.

(a) The provisions of Section R315-264-1084 apply to the control of air pollutant emissions from tanks for which Subsection R315-264-1082(b) references the use of Section R315-264-1084 for such air emission control.

(b) The owner or operator shall control air pollutant emissions from each tank subject to Section R315-264-1084 in accordance with the following requirements as applicable:

(1) For a tank that manages hazardous waste that meets all of the conditions specified in Subsections R315-264-1084(b)(1)(i) through (b)(1)(iii), the owner or operator shall control air pollutant emissions from the tank in accordance with the Tank Level 1 controls specified in Subsection R315-264-1084(c) or the Tank Level 2 controls specified in Subsection R315-264-1084(d).

(i) The hazardous waste in the tank has a maximum organic vapor pressure which is less than the maximum organic vapor pressure limit for the tank's design capacity category as follows:

(A) For a tank design capacity equal to or greater than 151 cubic meters, the maximum organic vapor pressure limit for the tank is 5.2 kPa.

(B) For a tank design capacity equal to or greater than 75 cubic meters but less than 151 cubic meters, the maximum organic vapor pressure limit for the tank is 27.6 kPa.

(C) For a tank design capacity less than 75 cubic meters, the maximum organic vapor pressure limit for the tank is 76.6 kPa.

(ii) The hazardous waste in the tank is not heated by the owner or operator to a temperature that is greater than the temperature at which the maximum organic vapor pressure of the hazardous waste is determined for the purpose of complying with Subsection R315-264-1084(b)(1)(i).

(iii) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process, as

defined in 40 CFR 265.1081, which is adopted by reference.

(2) For a tank that manages hazardous waste that does not meet all of the conditions specified in Subsections R315-264-1084(b)(1)(i) through (b)(1)(iii), the owner or operator shall control air pollutant emissions from the tank by using Tank Level 2 controls in accordance with the requirements of Subsection R315-264-1084(d). Examples of tanks required to use Tank Level 2 controls include: A tank used for a waste stabilization process; and a tank for which the hazardous waste in the tank has a maximum organic vapor pressure that is equal to or greater than the maximum organic vapor pressure limit for the tank's design capacity category as specified in Subsection R315-264-1084(b)(1)(i).

(c) Owners and operators controlling air pollutant emissions from a tank using Tank Level 1 controls shall meet the requirements specified in Subsections R315-264-1084(c)(1) through (c)(4):

(1) The owner or operator shall determine the maximum organic vapor pressure for a hazardous waste to be managed in the tank using Tank Level 1 controls before the first time the hazardous waste is placed in the tank. The maximum organic vapor pressure shall be determined using the procedures specified in Subsection R315-264-1083(c). Thereafter, the owner or operator shall perform a new determination whenever changes to the hazardous waste managed in the tank could potentially cause the maximum organic vapor pressure to increase to a level that is equal to or greater than the maximum organic vapor pressure limit for the tank design capacity category specified in Subsection R315-264-1084(b)(1)(i), as applicable to the tank.

(2) The tank shall be equipped with a fixed roof designed to meet the following specifications:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank. The fixed roof may be a separate cover installed on the tank, e.g., a removable cover mounted on an open-top tank, or may be an integral part of the tank structural design, e.g., a horizontal cylindrical tank equipped with a hatch.

(ii) The fixed roof shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between roof section joints or between the interface of the roof edge and the tank wall.

(iii) Each opening in the fixed roof, and any manifold system associated with the fixed roof, shall be either:

(A) Equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device; or

(B) Connected by a closed-vent system that is vented to a control device. The control device shall remove or destroy organics in the vent stream, and shall be operating whenever hazardous waste is managed in the tank, except as provided for in Subsection R315-264-1084(c)(2)(iii)(B)(I) and (II).

(I) During periods when it is necessary to provide access to the tank for performing the activities of Subsection R315-264-1084(c)(2)(iii)(B)(II), venting of the vapor headspace underneath the fixed roof to the control device is not required, opening of closure devices is allowed, and removal of the fixed roof is allowed. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, and resume operation of the control device.

(II) During periods of routine inspection, maintenance, or other activities needed for normal operations, and for removal of accumulated sludge or other residues from the bottom of the tank.

(iv) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the hazardous waste or its vapors managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(3) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position except as follows:

(i) Opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of tank.

(ii) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the tank internal pressure in accordance with the tank design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the tank internal pressure is within the internal pressure operating range determined by the owner or operator based on the tank manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the tank internal pressure exceeds the internal pressure operating range for the tank as a result of loading operations or diurnal ambient temperature fluctuations.

(iii) Opening of a safety device, as defined in 40 CFR 265.1081, which is adopted by reference, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator shall inspect the air emission control equipment in accordance with the following requirements.

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the fixed roof and its closure devices on or before the date that the tank becomes subject to Section R315-264-1084. Thereafter, the owner or operator shall perform the inspections at least once every year except under the special conditions provided for in Subsection R315-264-1084(l).

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1084(k).

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-264-1089(b).

(d) Owners and operators controlling air pollutant emissions from a tank using Tank Level 2 controls shall use one of the following tanks:

(1) A fixed-roof tank equipped with an internal floating roof in accordance with the requirements specified in Subsection R315-264-1084(e);

(2) A tank equipped with an external floating roof in accordance with the requirements specified in Subsection R315-264-1084(f)

(3) A tank vented through a closed-vent system to a control device in accordance with the requirements specified in Subsection R315-264-1084(g);

(4) A pressure tank designed and operated in accordance with the requirements specified in Subsection R315-264-1084(h); or

(5) A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements specified in Subsection R315-264-1084(i).

(e) The owner or operator who controls air pollutant emissions from a tank using a fixed roof with an internal floating roof shall meet the requirements specified in Subsections R315-264-1084(e)(1) through (e)(3).

(1) The tank shall be equipped with a fixed roof and an internal floating roof in accordance with the following requirements:

(i) The internal floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The internal floating roof shall be equipped with a continuous seal between the wall of the tank and the floating roof edge that meets either of the following requirements:

(A) A single continuous seal that is either a liquid-mounted seal or a metallic shoe seal, as defined in 40 CFR 265.1081, which is adopted by reference; or

(B) Two continuous seals mounted one above the other. The lower seal may be a vapor-mounted seal.

(iii) The internal floating roof shall meet the following specifications:

(A) Each opening in a noncontact internal floating roof except for automatic bleeder vents, vacuum breaker vents, and the rim space vents is to provide a projection below the liquid surface.

(B) Each opening in the internal floating roof shall be equipped with a gasketed cover or a gasketed lid except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains.

(C) Each penetration of the internal floating roof for the purpose of sampling shall have a slit fabric cover that covers at least 90 percent of the opening.

(D) Each automatic bleeder vent and rim space vent shall be gasketed.

(E) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(F) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Automatic bleeder vents are to be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(iii) Prior to filling the tank, each cover, access hatch, gauge float well or lid on any opening in the internal floating roof shall be bolted or fastened closed, i.e., no visible gaps. Rim space vents are to be set to open only when the internal floating roof is not floating or when the pressure beneath the rim exceeds the manufacturer's recommended setting.

(3) The owner or operator shall inspect the internal floating roof in accordance with the procedures specified as follows:

(i) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: The internal floating roof is not floating on the surface of the liquid inside the tank; liquid has accumulated on top of the internal floating roof; any portion of the roof seals have detached from the roof rim; holes, tears, or other openings are visible in the seal fabric; the gaskets no longer close off the hazardous waste surface from the atmosphere; or the slotted membrane has more than 10 percent open area.

(ii) The owner or operator shall inspect the internal floating roof components as follows except as provided in Subsection R315-264-1084(e)(3)(iii):

(A) Visually inspect the internal floating roof components through openings on the fixed-roof, e.g., manholes and roof hatches, at least once every 12 months after initial fill, and

(B) Visually inspect the internal floating roof, primary seal, secondary seal, if one is in service, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every 10 years.

(iii) As an alternative to performing the inspections specified in Subsection R315-264-1084(e)(3)(ii) for an internal floating roof equipped with two continuous seals mounted one above the other, the owner or operator may visually inspect the internal floating roof, primary and secondary seals, gaskets, slotted membranes, and sleeve seals, if any, each time the tank is emptied and degassed and at least every 5 years.

(iv) Prior to each inspection required by Subsections R315-264-1084(e)(3)(ii) or (e)(3)(iii), the owner or operator shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each visual inspection of an internal floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-264-1084(e)(3)(iv)(B).

(B) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Director as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least 7 calendar days before refilling the tank.

(v) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the

requirements of Subsection R315-264-1084(k).

(vi) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-264-1089(b).

(4) Safety devices, as defined in 40 CFR 265.1081, which is adopted by reference, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-264-1084(e).

(f) The owner or operator who controls air pollutant emissions from a tank using an external floating roof shall meet the requirements specified in Subsections R315-264-1084(f)(1) through (f)(3).

(1) The owner or operator shall design the external floating roof in accordance with the following requirements:

(i) The external floating roof shall be designed to float on the liquid surface except when the floating roof shall be supported by the leg supports.

(ii) The floating roof shall be equipped with two continuous seals, one above the other, between the wall of the tank and the roof edge. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be a liquid-mounted seal or a metallic shoe seal, as defined in 40 CFR 265.1081, which is adopted by reference. The total area of the gaps between the tank wall and the primary seal shall not exceed 212 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 3.8 centimeters. If a metallic shoe seal is used for the primary seal, the metallic shoe seal shall be designed so that one end extends into the liquid in the tank and the other end extends a vertical distance of at least 61 centimeters above the liquid surface.

(B) The secondary seal shall be mounted above the primary seal and cover the annular space between the floating roof and the wall of the tank. The total area of the gaps between the tank wall and the secondary seal shall not exceed 21.2 square centimeters per meter of tank diameter, and the width of any portion of these gaps shall not exceed 1.3 centimeters.

(iii) The external floating roof shall meet the following specifications:

(A) Except for automatic bleeder vents, vacuum breaker vents, and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(B) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid.

(C) Each access hatch and each gauge float well shall be equipped with a cover designed to be bolted or fastened when the cover is secured in the closed position.

(D) Each automatic bleeder vent and each rim space vent shall be equipped with a gasket.

(E) Each roof drain that empties into the liquid managed in the tank shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(F) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(G) Each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(H) Each slotted guide pole shall be equipped with a gasketed float or other device which closes off the liquid surface from the atmosphere.

(I) Each gauge hatch and each sample well shall be equipped with a gasketed cover.

(2) The owner or operator shall operate the tank in accordance with the following requirements:

(i) When the floating roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be completed as soon as practical.

(ii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be secured and maintained in a closed position at all times except when the closure device shall be open for access.

(iii) Covers on each access hatch and each gauge float well shall be bolted or fastened when secured in the closed position.

(iv) Automatic bleeder vents shall be set closed at all times when the roof is floating, except when the roof is being floated off or is being landed on the leg supports.

(v) Rim space vents shall be set to open only at those times that the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(vi) The cap on the end of each unslotted guide pole shall be secured in the closed position at all times except when measuring the level or collecting samples of the liquid in the tank.

(vii) The cover on each gauge hatch or sample well shall be secured in the closed position at all times except when the hatch or well shall be opened for access.

(viii) Both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except during inspections.

(3) The owner or operator shall inspect the external floating roof in accordance with the procedures specified as follows:

(i) The owner or operator shall measure the external floating roof seal gaps in accordance with the following requirements:

(A) The owner or operator shall perform measurements of gaps between the tank wall and the primary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every 5 years.

(B) The owner or operator shall perform measurements of gaps between the tank wall and the secondary seal within 60 calendar days after initial operation of the tank following installation of the floating roof and, thereafter, at least once every year.

(C) If a tank ceases to hold hazardous waste for a period of 1 year or more, subsequent introduction of hazardous waste into the tank shall be considered an initial operation for the purposes of Subsections R315-264-1084(f)(3)(i)(A) and (f)(3)(i)(B).

(D) The owner or operator shall determine the total surface area of gaps in the primary seal and in the secondary seal individually using the following procedure:

(1) The seal gap measurements shall be performed at one or more floating roof levels when the roof is floating off the roof supports.

(2) Seal gaps, if any, shall be measured around the entire perimeter of the floating roof in each place where a 0.32-centimeter diameter uniform probe passes freely, without forcing or binding against the seal, between the seal and the wall of the tank and measure the circumferential distance of each such location.

(3) For a seal gap measured under Subsection R315-264-1084(f)(3), the gap surface area shall be determined by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(4) The total gap area shall be calculated by adding the gap surface areas determined for each identified gap location for the primary seal and the secondary seal individually, and

then dividing the sum for each seal type by the nominal diameter of the tank. These total gap areas for the primary seal and secondary seal are then compared to the respective standards for the seal type as specified in Subsection R315-264-1084(f)(1)(ii).

(E) In the event that the seal gap measurements do not conform to the specifications in Subsection R315-264-1084(f)(1)(ii), the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1084(k).

(F) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-264-1089(b).

(ii) The owner or operator shall visually inspect the external floating roof in accordance with the following requirements:

(A) The floating roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to: Holes, tears, or other openings in the rim seal or seal fabric of the floating roof; a rim seal detached from the floating roof; all or a portion of the floating roof deck being submerged below the surface of the liquid in the tank; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(B) The owner or operator shall perform an initial inspection of the external floating roof and its closure devices on or before the date that the tank becomes subject to Section R315-264-1084. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-264-1084(l).

(C) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1084(k).

(D) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-264-1089(b).

(iii) Prior to each inspection required by Subsections R315-264-1084(f)(3)(i) or (f)(3)(ii), the owner or operator shall notify the Director in advance of each inspection to provide the Director with the opportunity to have an observer present during the inspection. The owner or operator shall notify the Director of the date and location of the inspection as follows:

(A) Prior to each inspection to measure external floating roof seal gaps as required under Subsection R315-264-1084(f)(3)(i), written notification shall be prepared and sent by the owner or operator so that it is received by the Director at least 30 calendar days before the date the measurements are scheduled to be performed.

(B) Prior to each visual inspection of an external floating roof in a tank that has been emptied and degassed, written notification shall be prepared and sent by the owner or operator so that it is received by the Director at least 30 calendar days before refilling the tank except when an inspection is not planned as provided for in Subsection R315-264-1084(f)(3)(iii)(C).

(C) When a visual inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days before refilling the tank, the owner or operator shall notify the Director as soon as possible, but no later than 7 calendar days before refilling of the tank. This notification may be made by telephone and immediately followed by a written explanation for why the inspection is unplanned. Alternatively, written notification, including the explanation for the unplanned inspection, may be sent so that it is received by the Director at least 7 calendar days before refilling the tank.

(4) Safety devices, as defined in 40 CFR 265.1081, which is adopted by reference, may be installed and operated as necessary on any tank complying with the requirements of Subsection R315-264-1084(f).

(g) The owner or operator who controls air pollutant emissions from a tank by venting the tank to a control device shall meet the requirements specified in Subsections R315-264-1084(g)(1) through (g)(3).

(1) The tank shall be covered by a fixed roof and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The fixed roof and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the tank.

(ii) Each opening in the fixed roof not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the fixed roof is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the fixed roof is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with no detectable organic emissions.

(iii) The fixed roof and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the fixed roof and closure devices throughout their intended service life. Factors to be considered when selecting the materials for and designing the fixed roof and closure devices shall include: Organic vapor permeability, the effects of any contact with the liquid and its vapor managed in the tank; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the tank on which the fixed roof is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-264-1087.

(2) Whenever a hazardous waste is in the tank, the fixed roof shall be installed with each closure device secured in the closed position and the vapor headspace underneath the fixed roof vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the fixed roof is allowed at the following times:

(A) To provide access to the tank for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the tank, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the tank.

(B) To remove accumulated sludge or other residues from the bottom of a tank.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, which is adopted by reference, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The fixed roof and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects

include, but are not limited to, visible cracks, holes, or gaps in the roof sections or between the roof and the tank wall; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Section R315-264-1087.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the tank becomes subject to Section R315-264-1084. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-264-1084(l).

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1084(k).

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-264-1089(b).

(h) The owner or operator who controls air pollutant emissions by using a pressure tank shall meet the following requirements.

(1) The tank shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the tank during filling of the tank to its design capacity.

(2) All tank openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in Subsection R315-264-1083(d).

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in Subsections R315-264-1084(h)(3)(i) or (h)(3)(ii).

(i) At those times when opening of a safety device, as defined in 40 CFR 265.1081, which is adopted by reference, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of Section R315-264-1087.

(i) The owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to an enclosed combustion control device shall meet the requirements specified in Subsections R315-264-1084(i)(1) through (i)(4).

(1) The tank shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed-vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in Section R315-264-1087.

(3) Safety devices, as defined in 40 CFR 265.1081, which is adopted by reference, may be installed and operated as necessary on any enclosure, closed-vent system, or control device used to comply with the requirements of Subsections R315-264-1084(i)(1) and (i)(2).

(4) The owner or operator shall inspect and monitor the closed-vent system and control device as specified in Section R315-264-1087.

(j) The owner or operator shall transfer hazardous waste to a tank subject to Section R315-264-1084 in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in Subsection R315-264-1084(j)(2), to the tank from another tank subject to Section R315-264-1084 or from a surface impoundment subject to Section R315-264-1085 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of Subsection R307-214-2(29), which incorporates 40 CFR part 63, subpart RR-National Emission Standards for Individual Drain Systems.

(2) The requirements of Subsection R315-264-1084(j)(1) do not apply when transferring a hazardous waste to the tank under any of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in Subsection R315-264-1082(c)(1) at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Subsection R315-264-1082(c)(2).

(iii) The hazardous waste meets the requirements of Subsection R315-264-1082(c)(4).

(k) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of Subsections R315-264-1084(c)(4), (e)(3), (f)(3), or (g)(3) as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection, and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in Subsection R315-264-1084(k)(2).

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the tank and no alternative tank capacity is available at the site to accept the hazardous waste normally managed in the tank. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the tank stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(l) Following the initial inspection and monitoring of the cover as required by the applicable provisions of Sections R315-264-1080 through 1090, subsequent inspection and monitoring may be performed at intervals longer than 1 year under the following special conditions:

(1) In the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions, then the owner or operator may designate a cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(i) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(ii) Develop and implement a written plan and schedule to inspect and monitor the cover, using the procedures specified in the applicable section of Sections R315-264-1080 through 1090, as frequently as practicable during those times when a worker can safely access the cover.

(2) In the case when a tank is buried partially or entirely underground, an owner or operator is required to inspect and monitor, as required by the applicable provisions of Section R315-264-1084, only those portions of the tank cover and those connections to the tank, e.g., fill ports, access hatches, gauge wells, etc., that are located on or above the ground surface.

R315-264-1085. Standards: Surface Impoundments.

(a) The provisions of Section R315-264-1085 apply to the control of air pollutant emissions from surface impoundments for which Subsection R315-264-1082(b) references the use of Section R315-264-1085 for such air emission control.

(b) The owner or operator shall control air pollutant emissions from the surface impoundment by installing and operating either of the following:

(1) A floating membrane cover in accordance with the provisions specified in Subsection R315-264-1085(c); or

(2) A cover that is vented through a closed-vent system to a control device in accordance with the provisions specified in Subsection R315-264-1085(d).

(c) The owner or operator who controls air pollutant emissions from a surface impoundment using a floating membrane cover shall meet the requirements specified in Subsections R315-264-1085(c)(1) through (c)(3).

(1) The surface impoundment shall be equipped with a floating membrane cover designed to meet the following specifications:

(i) The floating membrane cover shall be designed to float on the liquid surface during normal operations and form a continuous barrier over the entire surface area of the liquid.

(ii) The cover shall be fabricated from a synthetic membrane material that is either:

(A) High density polyethylene (HDPE) with a thickness no less than 2.5 millimeters; or

(B) A material or a composite of different materials determined to have both organic permeability properties that are equivalent to those of the material listed in Subsection R315-264-1085(c)(1)(ii)(A) and chemical and physical properties that maintain the material integrity for the intended service life of the material.

(iii) The cover shall be installed in a manner such that there are no visible cracks, holes, gaps, or other open spaces between cover section seams or between the interface of the cover edge and its foundation mountings.

(iv) Except as provided for in Subsection R315-264-1085(c)(1)(v), each opening in the floating membrane cover shall be equipped with a closure device designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device.

(v) The floating membrane cover may be equipped with one or more emergency cover drains for removal of stormwater. Each emergency cover drain shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening or a flexible fabric sleeve seal.

(vi) The closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid and its vapor managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the floating membrane cover is installed.

(2) Whenever a hazardous waste is in the surface impoundment, the floating membrane cover shall float on the liquid and each closure device shall be secured in the closed position except as follows:

(i) Opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample the liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly replace the cover and secure the closure device in the closed position, as applicable.

(B) To remove accumulated sludge or other residues from the bottom of surface impoundment.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, which is adopted by reference, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect the floating membrane cover in accordance with the following procedures:

(i) The floating membrane cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The owner or operator shall perform an initial inspection of the floating membrane cover and its closure devices on or before the date that the surface impoundment becomes subject to Section R315-264-1085. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-264-1085(g).

(iii) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1085(f).

(iv) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-264-1089(c).

(d) The owner or operator who controls air pollutant emissions from a surface impoundment using a cover vented to a control device shall meet the requirements specified in Subsections R315-264-1085(d)(1) through (d)(3).

(1) The surface impoundment shall be covered by a cover and vented directly through a closed-vent system to a control device in accordance with the following requirements:

(i) The cover and its closure devices shall be designed to form a continuous barrier over the entire surface area of the liquid in the surface impoundment.

(ii) Each opening in the cover not vented to the control device shall be equipped with a closure device. If the pressure in the vapor headspace underneath the cover is less than atmospheric pressure when the control device is operating, the closure devices shall be designed to operate such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the cover opening and the closure device. If the pressure in the vapor headspace underneath the cover is equal to or greater than atmospheric pressure when the control device is operating, the closure device shall be designed to operate with

no detectable organic emissions using the procedure specified in Subsection R315-264-1083(d).

(iii) The cover and its closure devices shall be made of suitable materials that will minimize exposure of the hazardous waste to the atmosphere, to the extent practical, and will maintain the integrity of the cover and closure devices throughout their intended service life. Factors to be considered when selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of any contact with the liquid or its vapors managed in the surface impoundment; the effects of outdoor exposure to wind, moisture, and sunlight; and the operating practices used for the surface impoundment on which the cover is installed.

(iv) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-264-1087.

(2) Whenever a hazardous waste is in the surface impoundment, the cover shall be installed with each closure device secured in the closed position and the vapor headspace underneath the cover vented to the control device except as follows:

(i) Venting to the control device is not required, and opening of closure devices or removal of the cover is allowed at the following times:

(A) To provide access to the surface impoundment for performing routine inspection, maintenance, or other activities needed for normal operations. Examples of such activities include those times when a worker needs to open a port to sample liquid in the surface impoundment, or when a worker needs to open a hatch to maintain or repair equipment. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable, to the surface impoundment.

(B) To remove accumulated sludge or other residues from the bottom of the surface impoundment.

(ii) Opening of a safety device, as defined in 40 CFR 265.1081, which is adopted by reference, is allowed at any time conditions require doing so to avoid an unsafe condition.

(3) The owner or operator shall inspect and monitor the air emission control equipment in accordance with the following procedures:

(i) The surface impoundment cover and its closure devices shall be visually inspected by the owner or operator to check for defects that could result in air pollutant emissions. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover section seams or between the interface of the cover edge and its foundation mountings; broken, cracked, or otherwise damaged seals or gaskets on closure devices; and broken or missing hatches, access covers, caps, or other closure devices.

(ii) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Section R315-264-1087.

(iii) The owner or operator shall perform an initial inspection of the air emission control equipment on or before the date that the surface impoundment becomes subject to Section R315-264-1085. Thereafter, the owner or operator shall perform the inspections at least once every year except for the special conditions provided for in Subsection R315-264-1085(g).

(iv) In the event that a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1085(f).

(v) The owner or operator shall maintain a record of the inspection in accordance with the requirements specified in Subsection R315-264-1089(c).

(e) The owner or operator shall transfer hazardous waste to a surface impoundment subject to Section R315-264-1085 in accordance with the following requirements:

(1) Transfer of hazardous waste, except as provided in Subsection R315-264-1085(e)(2), to the surface impoundment from another surface impoundment subject to Section R315-264-1085 or from a tank subject to Section R315-264-1084 shall be conducted using continuous hard-piping or another closed system that does not allow exposure of the waste to the atmosphere. For the purpose of complying with this provision, an individual drain system is considered to be a closed system when it meets the requirements of Subsection R307-214-2(29), which incorporates 40 CFR part 63, subpart RR-National Emission Standards for Individual Drain Systems.

(2) The requirements of Subsection R315-264-1085(e)(1) do not apply when transferring a hazardous waste to the surface impoundment under either of the following conditions:

(i) The hazardous waste meets the average VO concentration conditions specified in Subsection R315-264-1082(c)(1) at the point of waste origination.

(ii) The hazardous waste has been treated by an organic destruction or removal process to meet the requirements in Subsection R315-264-1082(c)(2).

(iii) The hazardous waste meets the requirements of Subsection R315-264-1082(c)(4).

(f) The owner or operator shall repair each defect detected during an inspection performed in accordance with the requirements of Subsections R315-264-1085(c)(3) or (d)(3) as follows:

(1) The owner or operator shall make first efforts at repair of the defect no later than 5 calendar days after detection and repair shall be completed as soon as possible but no later than 45 calendar days after detection except as provided in Subsection R315-264-1085(f)(2).

(2) Repair of a defect may be delayed beyond 45 calendar days if the owner or operator determines that repair of the defect requires emptying or temporary removal from service of the surface impoundment and no alternative capacity is available at the site to accept the hazardous waste normally managed in the surface impoundment. In this case, the owner or operator shall repair the defect the next time the process or unit that is generating the hazardous waste managed in the surface impoundment stops operation. Repair of the defect shall be completed before the process or unit resumes operation.

(g) Following the initial inspection and monitoring of the cover as required by the applicable provisions of Sections R315-264-1080 through 1090, subsequent inspection and monitoring may be performed at intervals longer than 1 year in the case when inspecting or monitoring the cover would expose a worker to dangerous, hazardous, or other unsafe conditions. In this case, the owner or operator may designate the cover as an "unsafe to inspect and monitor cover" and comply with all of the following requirements:

(1) Prepare a written explanation for the cover stating the reasons why the cover is unsafe to visually inspect or to monitor, if required.

(2) Develop and implement a written plan and schedule to inspect and monitor the cover using the procedures specified in the applicable section of Sections R315-264-1080 through 1090 as frequently as practicable during those times when a worker can safely access the cover.

R315-264-1086. Standards: Containers.

(a) The provisions of Section R315-264-1086 apply to the control of air pollutant emissions from containers for which Subsection R315-264-1082(b) references the use of

Section R315-264-1086 for such air emission control.

(b) General requirements.

(1) The owner or operator shall control air pollutant emissions from each container subject to Section R315-264-1086 in accordance with the following requirements, as applicable to the container, except when the special provisions for waste stabilization processes specified in Subsection R315-264-1086(b)(2) apply to the container.

(i) For a container having a design capacity greater than 0.1 cubic meters and less than or equal to 0.46 cubic meters, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-264-1086(c).

(ii) For a container having a design capacity greater than 0.46 cubic meters that is not in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 1 standards specified in Subsection R315-264-1086(c).

(iii) For a container having a design capacity greater than 0.46 cubic meters that is in light material service, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 2 standards specified in Subsection R315-264-1086(d).

(2) When a container having a design capacity greater than 0.1 cubic meters is used for treatment of a hazardous waste by a waste stabilization process, the owner or operator shall control air pollutant emissions from the container in accordance with the Container Level 3 standards specified in Subsection R315-264-1086(e) at those times during the waste stabilization process when the hazardous waste in the container is exposed to the atmosphere.

(c) Container Level 1 standards.

(1) A container using Container Level 1 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in Subsection R315-264-1086(f).

(ii) A container equipped with a cover and closure devices that form a continuous barrier over the container openings such that when the cover and closure devices are secured in the closed position there are no visible holes, gaps, or other open spaces into the interior of the container. The cover may be a separate cover installed on the container, e.g., a lid on a drum or a suitably secured tarp on a roll-off box, or may be an integral part of the container structural design, e.g., a "portable tank" or bulk cargo container equipped with a screw-type cap.

(iii) An open-top container in which an organic-vapor suppressing barrier is placed on or over the hazardous waste in the container such that no hazardous waste is exposed to the atmosphere. One example of such a barrier is application of a suitable organic-vapor suppressing foam.

(2) A container used to meet the requirements of Subsections R315-264-1086(c)(1)(ii) or (c)(1)(iii) shall be equipped with covers and closure devices, as applicable to the container, that are composed of suitable materials to minimize exposure of the hazardous waste to the atmosphere and to maintain the equipment integrity, for as long as the container is in service. Factors to be considered in selecting the materials of construction and designing the cover and closure devices shall include: Organic vapor permeability; the effects of contact with the hazardous waste or its vapor managed in the container; the effects of outdoor exposure of the closure device or cover material to wind, moisture, and sunlight; and the operating practices for which the container is intended to be used.

(3) Whenever a hazardous waste is in a container using Container Level 1 controls, the owner or operator shall install all covers and closure devices for the container, as applicable to the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-264-1086, an empty container as defined in Subsection R315-261-7(b) may be open to the atmosphere at any time, i.e., covers and closure devices are not required to be secured in the closed position on an empty container.

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in Subsection R315-261-7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emissions when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may

require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 265.1081, which is adopted by reference, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., does not meet the conditions for an empty container as specified in Subsection R315-261-7(b), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to container standards of Sections R315-264-1080 through 1090. For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to Rule R315-262 (EPA Forms 8700-22 and 8700-22A), as required under Section R315-264-71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(c)(4)(iii).

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(c)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(5) The owner or operator shall maintain at the facility a copy of the procedure used to determine that containers with capacity of 0.46 cubic meters or greater, which do not meet applicable DOT regulations as specified in Subsection R315-264-1086(f), are not managing hazardous waste in light material service.

(d) Container Level 2 standards.

(1) A container using Container Level 2 controls is one of the following:

(i) A container that meets the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation as specified in Subsection R315-264-1086(f).

(ii) A container that operates with no detectable organic emissions as defined in 40 CFR 265.1081, which is adopted by reference, and determined in accordance with the procedure specified in Subsection R315-264-1086(g).

(iii) A container that has been demonstrated within the preceding 12 months to be vapor-tight by using 40 CFR part 60, appendix A, Method 27 in accordance with the procedure specified in Subsection R315-264-1086(h).

(2) Transfer of hazardous waste in or out of a container using Container Level 2 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-264-1086(d) include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(3) Whenever a hazardous waste is in a container using Container Level 2 controls, the owner or operator shall install all covers and closure devices for the container, and secure and maintain each closure device in the closed position except as follows:

(i) Opening of a closure device or cover is allowed for the purpose of adding hazardous waste or other material to the container as follows:

(A) In the case when the container is filled to the intended final level in one continuous operation, the owner or operator shall promptly secure the closure devices in the closed position and install the covers, as applicable to the container, upon conclusion of the filling operation.

(B) In the case when discrete quantities or batches of material intermittently are added to the container over a period of time, the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon either the container being filled to the intended final level; the completion of a batch loading after which no additional material will be added to the container within 15 minutes; the person performing the loading operation leaving the immediate vicinity of the container; or the shutdown of the process generating the material being added to the container, whichever condition occurs first.

(ii) Opening of a closure device or cover is allowed for the purpose of removing hazardous waste from the container as follows:

(A) For the purpose of meeting the requirements of Section R315-264-1086, an empty container as defined in Subsection R315-261-7(b) may be open to the atmosphere at any time, i.e., covers and closure devices are not required to be secured in the closed position on an empty container.

(B) In the case when discrete quantities or batches of material are removed from the container but the container does not meet the conditions to be an empty container as defined in Subsection R315-261-7(b), the owner or operator shall promptly secure the closure devices in the closed position and install covers, as applicable to the container, upon the completion of a batch removal after which no additional material will be removed from the container within 15 minutes or the person performing the unloading operation leaves the immediate vicinity of the container, whichever condition occurs first.

(iii) Opening of a closure device or cover is allowed when access inside the container is needed to perform routine activities other than transfer of hazardous waste. Examples of such activities include those times when a worker needs to open a port to measure the depth of or sample the material in

the container, or when a worker needs to open a manhole hatch to access equipment inside the container. Following completion of the activity, the owner or operator shall promptly secure the closure device in the closed position or reinstall the cover, as applicable to the container.

(iv) Opening of a spring-loaded, pressure-vacuum relief valve, conservation vent, or similar type of pressure relief device which vents to the atmosphere is allowed during normal operations for the purpose of maintaining the internal pressure of the container in accordance with the container design specifications. The device shall be designed to operate with no detectable organic emission when the device is secured in the closed position. The settings at which the device opens shall be established such that the device remains in the closed position whenever the internal pressure of the container is within the internal pressure operating range determined by the owner or operator based on container manufacturer recommendations, applicable regulations, fire protection and prevention codes, standard engineering codes and practices, or other requirements for the safe handling of flammable, ignitable, explosive, reactive, or hazardous materials. Examples of normal operating conditions that may require these devices to open are during those times when the internal pressure of the container exceeds the internal pressure operating range for the container as a result of loading operations or diurnal ambient temperature fluctuations.

(v) Opening of a safety device, as defined in 40 CFR 265.1081, which is adopted by reference, is allowed at any time conditions require doing so to avoid an unsafe condition.

(4) The owner or operator of containers using Container Level 2 controls shall inspect the containers and their covers and closure devices as follows:

(i) In the case when a hazardous waste already is in the container at the time the owner or operator first accepts possession of the container at the facility and the container is not emptied within 24 hours after the container is accepted at the facility, i.e., does not meet the conditions for an empty container as specified in Subsection R35- 261-7(b), the owner or operator shall visually inspect the container and its cover and closure devices to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. The container visual inspection shall be conducted on or before the date that the container is accepted at the facility, i.e., the date the container becomes subject to the container standards of Sections R315-264-1080 through. For purposes of this requirement, the date of acceptance is the date of signature that the facility owner or operator enters on Item 20 of the Uniform Hazardous Waste Manifest in the appendix to Rule R315-262 (EPA Forms 8700-22 and 8700-22A), as required under Section R315-264-71. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(d)(4)(iii).

(ii) In the case when a container used for managing hazardous waste remains at the facility for a period of 1 year or more, the owner or operator shall visually inspect the container and its cover and closure devices initially and thereafter, at least once every 12 months, to check for visible cracks, holes, gaps, or other open spaces into the interior of the container when the cover and closure devices are secured in the closed position. If a defect is detected, the owner or operator shall repair the defect in accordance with the requirements of Subsection R315-264-1086(d)(4)(iii).

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect no later than 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

(e) Container Level 3 standards.

(1) A container using Container Level 3 controls is one of the following:

(i) A container that is vented directly through a closed-vent system to a control device in accordance with the requirements of Subsection R315-264-1086(e)(2)(ii).

(ii) A container that is vented inside an enclosure which is exhausted through a closed-vent system to a control device in accordance with the requirements of Subsections R315-264-1086(e)(2)(i) and (e)(2)(ii).

(2) The owner or operator shall meet the following requirements, as applicable to the type of air emission control equipment selected by the owner or operator:

(i) The container enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" initially when the enclosure is first installed and, thereafter, annually.

(ii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of Section R315-264-1087.

(3) Safety devices, as defined in 40 CFR 265.1081, which is adopted by reference, may be installed and operated as necessary on any container, enclosure, closed-vent system, or control device used to comply with the requirements of Subsection R315-264-1086(e)(1).

(4) Owners and operators using Container Level 3 controls in accordance with the provisions of Sections R315-264-1086 through 1090 shall inspect and monitor the closed-vent systems and control devices as specified in Subsection R315-264-1087.

(5) Owners and operators that use Container Level 3 controls in accordance with the provisions of Sections R315-264-1086 through 1090 shall prepare and maintain the records specified in Subsection R315-264-1089(d).

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the Director considers to meet the requirements of Subsection R315-264-1086(e) include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

(f) For the purpose of compliance with Subsection R315-264-1086(c)(1)(i) or (d)(1)(i), containers shall be used that meet the applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for

transportation as follows:

(1) The container meets the applicable requirements specified in 49 CFR part 178-Specifications for Packaging or 49 CFR part 179-Specifications for Tank Cars.

(2) Hazardous waste is managed in the container in accordance with the applicable requirements specified in 49 CFR part 107, subpart B-Exemptions; 49 CFR part 172-Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements; 49 CFR part 173-Shippers-General Requirements for Shipments and Packages; and 49 CFR part 180-Continuing Qualification and Maintenance of Packagings.

(3) For the purpose of complying with Sections R315-264-1086 through 1090, no exceptions to the 49 CFR part 178 or part 179 regulations are allowed except as provided for in Subsection R315-264-1086(f)(4).

(4) For a lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with Sections R315-264-1086 through 1090, an owner or operator may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(g) To determine compliance with the no detectable organic emissions requirement of Subsection R315-264-1086(d)(1)(ii), the procedure specified in Subsection R315-264-1083(d) shall be used.

(1) Each potential leak interface, i.e., a location where organic vapor leakage could occur, on the container, its cover, and associated closure devices, as applicable to the container, shall be checked. Potential leak interfaces that are associated with containers include, but are not limited to: The interface of the cover rim and the container wall; the periphery of any opening on the container or container cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the container is filled with a material having a volatile organic concentration representative of the range of volatile organic concentrations for the hazardous wastes expected to be managed in this type of container. During the test, the container cover and closure devices shall be secured in the closed position.

(h) Procedure for determining a container to be vapor-tight using Method 27 of 40 CFR part 60, appendix A for the purpose of complying with Subsection R315-264-1086(d)(1)(iii).

(1) The test shall be performed in accordance with Method 27 of 40 CFR part 60, appendix A of this chapter.

(2) A pressure measurement device shall be used that has a precision of +/- 2.5 mm water and that is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(3) If the test results determined by Method 27 indicate that the container sustains a pressure change less than or equal to 750 Pascals within 5 minutes after it is pressurized to a minimum of 4,500 Pascals, then the container is determined to be vapor-tight.

R315-264-1087. Standards: Closed-Vent Systems and Control Devices.

(a) Section R315-264-1087 applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of Sections R315-264-1080 through 1090.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in Subsection R315-264-1087(c).

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in Subsection R315-264-1033(k).

(3) In the case when the closed-vent system includes bypass devices that could be used to divert the gas or vapor stream to the atmosphere before entering the control device, each bypass device shall be equipped with either a flow indicator as specified in Subsection R315-264-1087(b)(3)(i) or a seal or locking device as specified in Subsection R315-264-1087(b)(3)(ii). For the purpose of complying with Subsection R315-264-1087(b), low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, spring loaded pressure relief valves, and other fittings used for safety purposes are not considered to be bypass devices.

(i) If a flow indicator is used to comply with Subsection R315-264-1087(b)(3), the indicator shall be installed at the inlet to the bypass line used to divert gases and vapors from the closed-vent system to the atmosphere at a point upstream of the control device inlet. For Subsection R315-264-1087(b), a flow indicator means a device which indicates the presence of either gas or vapor flow in the bypass line.

(ii) If a seal or locking device is used to comply with Subsection R315-264-1087(b)(3), the device shall be placed on the mechanism by which the bypass device position is controlled, e.g., valve handle, damper lever, when the bypass device is in the closed position such that the bypass device cannot be opened without breaking the seal or removing the lock. Examples of such devices include, but are not limited to, a car-seal or a lock-and-key configuration valve. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the bypass mechanism is maintained in the closed position.

(4) The closed-vent system shall be inspected and monitored by the owner or operator in accordance with the procedure specified in Subsection R315-264-1033(l).

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of Subsection R315-264-1033(c); or

(iii) A flare designed and operated in accordance with the requirements of Subsection R315-264-1033(d).

(2) The owner or operator who elects to use a closed-vent system and control device to comply with the requirements of Section R315-264-1087 shall comply with the requirements specified in Subsections R315-264-1087(c)(2)(i) through (c)(2)(vi).

(i) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of Subsections R315-264-1087(c)(1)(i), (c)(1)(ii), or (c)(1)(iii), as applicable, shall not exceed 240 hours per year.

(ii) The specifications and requirements in Subsections R315-264-1087(c)(1)(i), (c)(1)(ii), and (c)(1)(iii) for control devices do not apply during periods of planned routine maintenance.

(iii) The specifications and requirements in Subsections R315-264-1087(c)(1)(i), (c)(1)(ii), and (c)(1)(iii) for control devices do not apply during a control device system malfunction.

(iv) The owner or operator shall demonstrate compliance with the requirements of Subsection R315-264-1087(c)(2)(i), i.e., planned routine maintenance of a control device, during which the control device does not meet the

specifications of Subsections R315-264-1087(c)(1)(i), (c)(1)(ii), or (c)(1)(iii), as applicable, shall not exceed 240 hours per year, by recording the information specified in Subsection R315-264-1089(e)(1)(v).

(v) The owner or operator shall correct control device system malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of air pollutants.

(vi) The owner or operator shall operate the closed-vent system such that gases, vapors, or fumes are not actively vented to the control device during periods of planned maintenance or control device system malfunction, i.e., periods when the control device is not operating or not operating normally, except in cases when it is necessary to vent the gases, vapors, and/or fumes to avoid an unsafe condition or to implement malfunction corrective actions or planned maintenance actions.

(3) The owner or operator using a carbon adsorption system to comply with Subsection R315-264-1087(c)(1) shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of Subsections R315-264-1033(g) or 1033(h).

(ii) All carbon that is a hazardous waste and that is removed from the control device shall be managed in accordance with the requirements of Subsection R315-264-1033(n), regardless of the average volatile organic concentration of the carbon.

(4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with Subsection R315-264-1087(c)(1) shall operate and maintain the control device in accordance with the requirements of Subsection R315-264-1033(j).

(5) The owner or operator shall demonstrate that a control device achieves the performance requirements of Subsection R315-264-1087(c)(1) as follows:

(i) An owner or operator shall demonstrate using either a performance test as specified in Subsection R315-264-1087(c)(5)(iii) or a design analysis as specified in Subsection R315-264-1087(c)(5)(iv) the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(D) A boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a final permit under Rule R315-270 and has designed and operates the unit in accordance with the requirements of Sections R315-266-100 through 112; or

(E) A boiler or industrial furnace burning hazardous waste for which the owner or operator has designed and operates in accordance with the interim status requirements of Sections R315-266-100 through 112.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in Subsection R315-264-1033(e).

(iii) For a performance test conducted to meet the requirements of Subsection R315-264-1087(c)(5)(i), the owner or operator shall use the test methods and procedures specified in Subsections R315-264-1034(c)(1) through (c)(4).

(iv) For a design analysis conducted to meet the requirements of Subsection R315-264-1087(c)(5)(i), the design analysis shall meet the requirements specified in Subsection R315-264-1035(b)(4)(iii).

(v) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of Subsection R315-264-1087(c)(1) based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the owner or operator and the Director do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of Subsection R315-264-1087(c)(5)(iii). The Director may choose to have an authorized representative observe the performance test.

(7) The closed-vent system and control device shall be inspected and monitored by the owner or operator in accordance with the procedures specified in Subsections R315-264-1033(f)(2) and 1033(l). The readings from each monitoring device required by Subsection R315-264-1033(f)(2) shall be inspected at least once each operating day to check control device operation. Any necessary corrective measures shall be immediately implemented to ensure the control device is operated in compliance with the requirements of Section R315-264-1087.

R315-264-1088. Inspection and Monitoring Requirements.

(a) The owner or operator shall inspect and monitor air emission control equipment used to comply with Sections R315-264-1080 through 1090 in accordance with the applicable requirements specified in Sections R315-264-1084 through 1087.

(b) The owner or operator shall develop and implement a written plan and schedule to perform the inspections and monitoring required by Subsection R315-264-1088(a). The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under Section R315-264-15.

R315-264-1089. Recordkeeping Requirements.

(a) Each owner or operator of a facility subject to requirements of Sections R315-264-1080 through 1090 shall record and maintain the information specified in Subsections R315-264-1089(b) through (j), as applicable to the facility. Except for air emission control equipment design documentation and information required by Subsections R315-264-1089(i) and (j), records required by Section R315-264-1089 shall be maintained in the operating record for a minimum of 3 years. Air emission control equipment design documentation shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service. Information required by Subsections R315-264-1089(i) and (j) shall be maintained in the operating record for as long as the waste management unit is not using air emission controls specified in Sections R315-264-1084 through 1087 in accordance with the conditions specified in Subsection R315-264-1080(d) or 1080(b)(7), respectively.

(b) The owner or operator of a tank using air emission controls in accordance with the requirements of Section R315-264-1084 shall prepare and maintain records for the tank that include the following information:

(1) For each tank using air emission controls in accordance with the requirements of Subsection R315-264-1084, the owner or operator shall record:

(i) A tank identification number, or other unique identification description as selected by the owner or operator.

(ii) A record for each inspection required by Section R315-264-1084 that includes the following information:

(A) Date inspection was conducted.

(B) For each defect detected during the inspection: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the requirements of Section R315-264-1084, the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(2) In addition to the information required by Subsection R315-264-1089(b)(1), the owner or operator shall record the following information, as applicable to the tank:

(i) The owner or operator using a fixed roof to comply with the Tank Level 1 control requirements specified in Subsection R315-264-1084(c) shall prepare and maintain records for each determination for the maximum organic vapor pressure of the hazardous waste in the tank performed in accordance with the requirements of Subsection R315-264-1084(c). The records shall include the date and time the samples were collected, the analysis method used, and the analysis results.

(ii) The owner or operator using an internal floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-264-1084(e) shall prepare and maintain documentation describing the floating roof design.

(iii) Owners and operators using an external floating roof to comply with the Tank Level 2 control requirements specified in Subsection R315-264-1084(f) shall prepare and maintain the following records:

(A) Documentation describing the floating roof design and the dimensions of the tank.

(B) Records for each seal gap inspection required by Subsection R315-264-1084(f)(3) describing the results of the seal gap measurements. The records shall include the date that the measurements were performed, the raw data obtained for the measurements, and the calculations of the total gap surface area. In the event that the seal gap measurements do not conform to the specifications in Subsection R315-264-1084(f)(1), the records shall include a description of the repairs that were made, the date the repairs were made, and the date the tank was emptied, if necessary.

(iv) Each owner or operator using an enclosure to comply with the Tank Level 2 control requirements specified in Subsection R315-264-1084(i) shall prepare and maintain the following records:

(A) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T---Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(B) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-264-1089(e).

(c) The owner or operator of a surface impoundment using air emission controls in accordance with the requirements of Section R315-264-1085 shall prepare and maintain records for the surface impoundment that include the following information:

(1) A surface impoundment identification number, or other unique identification description as selected by the owner or operator.

(2) Documentation describing the floating membrane cover or cover design, as applicable to the surface impoundment, that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in Subsection R315-264-1085(c).

(3) A record for each inspection required by Section R315-264-1085 that includes the following information:

(i) Date inspection was conducted.

(ii) For each defect detected during the inspection the following information: The location of the defect, a description of the defect, the date of detection, and corrective action taken to repair the defect. In the event that repair of the defect is delayed in accordance with the provisions of Subsection R315-264-1085(f), the owner or operator shall also record the reason for the delay and the date that completion of repair of the defect is expected.

(4) For a surface impoundment equipped with a cover and vented through a closed-vent system to a control device, the owner or operator shall prepare and maintain the records specified in Subsection R315-264-1089(e).

(d) The owner or operator of containers using Container Level 3 air emission controls in accordance with the requirements of Section R315-264-1086 shall prepare and maintain records that include the following information:

(1) Records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 CFR 52.741, appendix B.

(2) Records required for the closed-vent system and control device in accordance with the requirements of Subsection R315-264-1089(e).

(e) The owner or operator using a closed-vent system and control device in accordance with the requirements of Section R315-264-1087 shall prepare and maintain records that include the following information:

(1) Documentation for the closed-vent system and control device that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in Subsection R315-264-1089(e)(1)(ii) or by performance tests as specified in Subsection R315-264-1089(e)(1)(iii) when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in Subsection R315-264-1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with Subsection R315-264-1035(b)(4)(iii) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in Subsection R315-264-1035(b)(3) and all test results.

(iv) Information as required by Subsection R315-264-1035(c)(1) and Subsection R315-264-1035(c)(2), as applicable.

(v) An owner or operator shall record, on a semiannual basis, the information specified in Subsections R315-264-1089(e)(1)(v)(A) and (e)(1)(v)(B) for those planned routine maintenance operations that would require the control device not to meet the requirements of Subsections R315-264-1087(c)(1)(i), (c)(1)(ii), or (c)(1)(iii), as applicable.

(A) A description of the planned routine maintenance that is anticipated to be performed for the control device during the next 6-month period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

(B) A description of the planned routine maintenance

that was performed for the control device during the previous 6-month period. This description shall include the type of maintenance performed and the total number of hours during those 6 months that the control device did not meet the requirements of Subsections R315-264-1087 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii), as applicable, due to planned routine maintenance.

(vi) An owner or operator shall record the information specified in Subsections R315-264-1089(e)(1)(vi)(A) through (e)(1)(vi)(C) for those unexpected control device system malfunctions that would require the control device not to meet the requirements of Subsections R315-264-1087 (c)(1)(i), (c)(1)(ii), or (c)(1)(iii), as applicable.

(A) The occurrence and duration of each malfunction of the control device system.

(B) The duration of each period during a malfunction when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device while the control device is not properly functioning.

(C) Actions taken during periods of malfunction to restore a malfunctioning control device to its normal or usual manner of operation.

(vii) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with Subsection R315-264-1087(c)(3)(ii).

(f) The owner or operator of a tank, surface impoundment, or container exempted from standards in accordance with the provisions of Subsection R315-264-1082(c) shall prepare and maintain the following records, as applicable:

(1) For tanks, surface impoundments, and containers exempted under the hazardous waste organic concentration conditions specified in Subsections R315-264-1082(c)(1) or 1082(c)(2)(i) through (c)(2)(vi), the owner or operator shall record the information used for each waste determination, e.g., test results, measurements, calculations, and other documentation, in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of Section R315-264-1083.

(2) For tanks, surface impoundments, or containers exempted under the provisions of Subsections R315-264-1082(c)(2)(vii) or (c)(2)(viii), the owner or operator shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(g) An owner or operator designating a cover as "unsafe to inspect and monitor" pursuant to Subsections R315-264-1084(l) or 1085(g) shall record in a log that is kept in the facility operating record the following information: The identification numbers for waste management units with covers that are designated as "unsafe to inspect and monitor," the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(h) The owner or operator of a facility that is subject to Section R315-264-1080 through 1090 and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of Section R315-264-1080 through 1090 by documentation either pursuant to Section R315-264-1080 through 1090, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by Section R315-264-1089.

(i) For each tank or container not using air emission controls specified in Sections R315-264-1084 through 1087 in accordance with the conditions specified in Subsection R315-264-1080(d), the owner or operator shall record and maintain the following information:

(1) A list of the individual organic peroxide compounds manufactured at the facility that meet the conditions specified in Subsection R315-264-1080(d)(1).

(2) A description of how the hazardous waste containing the organic peroxide compounds identified in Subsection R315-264-1089(i)(1) are managed at the facility in tanks and containers. This description shall include:

(i) For the tanks used at the facility to manage this hazardous waste, sufficient information shall be provided to describe for each tank: A facility identification number for the tank; the purpose and placement of this tank in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste managed in the tanks.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to describe: A facility identification number for the container or group of containers; the purpose and placement of this container, or group of containers, in the management train of this hazardous waste; and the procedures used to ultimately dispose of the hazardous waste handled in the containers.

(3) An explanation of why managing the hazardous waste containing the organic peroxide compounds identified in Subsection R315-264-1089(i)(1) in the tanks and containers as described in Subsection R315-264-1089(i)(2) would create an undue safety hazard if the air emission controls, as required under Sections R315-264-1084 through 1087, are installed and operated on these waste management units. This explanation shall include the following information:

(i) For tanks used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the tanks would affect the tank design features and facility operating procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the tanks; and why installation of safety devices on the required air emission controls, as allowed under Section R315-264-1080 through 1090, will not address those situations in which evacuation of tanks equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(ii) For containers used at the facility to manage these hazardous wastes, sufficient information shall be provided to explain: How use of the required air emission controls on the containers would affect the container design features and handling procedures currently used to prevent an undue safety hazard during the management of this hazardous waste in the containers; and why installation of safety devices on the required air emission controls, as allowed under Section R315-264-1080 through 1090, will not address those situations in which evacuation of containers equipped with these air emission controls is necessary and consistent with good engineering and safety practices for handling organic peroxides.

(j) For each hazardous waste management unit not using air emission controls specified in Sections R315-264-1084 through 1087 in accordance with the requirements of Subsection R315-264-1080(b)(7), the owner and operator shall record and maintain the following information:

(1) Certification that the waste management unit is equipped with and operating air emission controls in accordance with the requirements of an applicable regulation codified under the Utah Air Conservation Act.

(2) Identification of the specific requirements codified

under the Utah Air Conservation Act with which the waste management unit is in compliance.

R315-264-1090. Reporting Requirements.

(a) Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of Subsection R315-264-1082(c) shall report to the Director each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in Subsection R315-264-1082(c)(1) or (c)(2), as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 500 ppmw at the point of waste origination; or placing in the waste management unit a treated hazardous waste of which the organic content has been reduced by an organic destruction or removal process that fails to achieve the applicable conditions specified in Subsections R315-264-1082(c)(2)(i) through (c)(2)(vi). The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(b) Each owner or operator using air emission controls on a tank in accordance with the requirements Subsection R315-264-1084(c) shall report to the Director each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in Subsection R315-264-1084(b). The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent recurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(c) Each owner or operator using a control device in accordance with the requirements of Section R315-264-1087 shall submit a semiannual written report to the Director excepted as provided for in Subsection R315-264-1090(d). The report shall describe each occurrence during the previous 6-month period when either:

(1) A control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in Subsection R315-264-1035(c)(4); or

(2) A flare is operated with visible emissions for 5 minutes or longer in a two-hour period, as defined in Subsection R315-264-1033(d). The written report shall include the EPA identification number, facility name and address, and an explanation why the control device could not be returned to compliance within 24 hours, and actions taken to correct the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(d) A report to the Director in accordance with the requirements of Subsection R315-264-1090(c) is not required for a 6-month period during which all control devices subject to Section R316-264-1080 through 1090 are operated by the owner or operator such that:

(1) During no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in Subsection R315-264-1035(c)(4); and

(2) No flare was operated with visible emissions for 5 minutes or longer in a two-hour period, as defined in Subsection R315-264-1033(d).

R315-264-1100. Containment Buildings -- Applicability.

The requirements of Sections R315-264-1100 through 1102 apply to owners or operators who store or treat hazardous waste in units designed and operated under Section R315-264-1101. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

(a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

(1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time, unless the unit has been granted a variance from the secondary containment system requirements under Subsection R315-264-1101(b)(4);

(d) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in Subsection R315-264-1101(c)(1)(iv); and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

R315-264-1101. Design and Operating Standards.

(a) All containment buildings shall comply with the following design standards:

(1) The containment building shall be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, e.g., precipitation, wind, run-on, and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required under Subsection R315-264-1101(b), shall be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit shall be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with

hazardous wastes shall be chemically compatible with those wastes. the Director shall consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of Subsection R315-264-1101(a). If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) They provide an effective barrier against fugitive dust emissions under Subsection R315-264-1101(c)(1)(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents shall not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building shall have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids, the presence of which is determined by the paint filter test, a visual examination, or other appropriate means, the owner or operator shall include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier, e.g., a geomembrane covered by a concrete wear surface.

(2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier shall be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste shall be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of 1 percent or more; and

(B) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 30.5 cm (12 inches) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m2/sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted shall be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system shall be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of Subsection R315-264-193(e)(1). In addition, the containment building shall meet the requirements of Subsections R315-264-193(b) and 193(c)(1) and (2) to be considered an acceptable secondary containment system for a tank.

(4) For existing units other than 90-day generator units, the Director may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of Sections R315-264-1100 and 1102. In making this demonstration, the owner or operator shall:

(i) Provide written notice to the Director of their request by November 16, 1992. This notification shall describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) Respond to any comments from the Director on these plans within 30 days; and

(iii) Fulfill the terms of the revised plans, if such plans are approved by the Director.

(c) Owners or operators of all containment buildings shall:

(1) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area shall be designated to decontaminate equipment and any rinsate shall be collected and properly managed; and

(iv) Take measures to control fugitive dust emissions such that any openings, doors, windows, vents, cracks, etc., exhibit no visible emissions, see 40 CFR part 60, appendix A, Method 22-Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares. In addition, all associated particulate collection devices, e.g., fabric filter, electrostatic precipitator, shall be operated and maintained with sound air pollution control practices, see 40 CFR part 60 subpart 292 for guidance. This state of no visible emissions shall be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of Subsections R315-264-1101(a), (b), and (c).

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator shall repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste, e.g., upon detection of leakage from the primary barrier, the owner or operator shall:

(A) Enter a record of the discovery in the facility operating record;

(B) Immediately remove the portion of the containment building affected by the condition from service;

(C) Determine what steps shall be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(D) Within 7 days after the discovery of the condition, notify the Director of the condition, and within 14 working days, provide a written notice to the Director with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Director shall review the information submitted, make a determination regarding whether the containment building shall be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and cleanup the owner or operator shall notify the Director in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with Subsection R315-264-1101(c)(3)(i)(D).

(4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For a containment building that contains both areas with and without secondary containment, the owner or operator shall:

(1) Design and operate each area in accordance with the requirements enumerated in Subsections R315-264-1101(a) through (c);

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of Subsection R315-264-1100 through 1102 the Director may waive requirements for secondary containment for a permitted containment building where the owner operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

R315-264-1102. Closure and Post-Closure Care.

(a) At closure of a containment building, 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 Subsection R315-261-3(d) applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings shall meet all of the requirements specified in Sections R315-264-110 through 120 and 140 through 151.

(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 Subsection R315-264-1102(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, Section R315-264-310. In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator shall meet all of the requirements for landfills specified in Sections R315-264-110 through 120 and 140 through 151.

R315-264-1103. Appendix I to Rule R315-264 -- Recordkeeping Instructions.

The recordkeeping provisions of Section R315-264-73 specify that an owner or operator shall keep a written operating record at his facility. This appendix provides additional instructions for keeping portions of the operating record. See Subsection R315-264-73(b) for additional recordkeeping requirements.

The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility in the following manner:

Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

(1) A description by its common name and the EPA Hazardous Waste Number(s) from Rule R315-261 which apply to the waste. The waste description also shall include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in Sections R315-261-30 through 35, the description also shall include the process that produced it, for example, solid filter cake from production of ----, EPA Hazardous Waste Number W051.

Each hazardous waste listed in Sections R315-261-30 through 35, and each hazardous waste characteristic defined in Sections R315-261-20 through 24, has a four-digit EPA Hazardous Waste Number assigned to it. This number shall be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description shall include all applicable EPA Hazardous Waste Numbers.

(2) The estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1;

Table 1

Unit of measure	Code(1)
Gallons	G
Gallons per Hour	E
Gallons per Day	U
Liters	L
Liters per Hour	H
Liters per Day	V
Short Tons per Hour	D
Metric Tons per Hour	W
Short Tons per Day	N
Metric Tons per Day	S
Pounds per Hour	J
Kilograms per Hour	R
Cubic Yards	Y
Cubic Meters	C
Acres	B
Acre-feet	A
Hectares	Q
Hectare-meter	F
Btu's per Hour	I
Pounds	P
Short tons	T
Kilograms	K
Tons	M

(1) Single digit symbols are used here for data processing purposes.

(3) The method(s), by handling code(s) as specified in Table 2, and date(s) of treatment, storage, or disposal.

Table 2
Handling Codes for Treatment, Storage and Disposal Methods

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store or dispose of each quantity of hazardous waste received.

For Storage

```
Code  Storage type
S01   Container (barrel, drum, etc.)
S02   Tank
S03   Waste Pile
S04   Surface Impoundment
S05   Drip Pad
S06   Containment Building (Storage)
S99   Other Storage (specify)

For Treatment

   (a)   Thermal Treatment-
Code  Type of Thermal Treatment
T06   Liquid injection incinerator
T07   Rotary kiln incinerator
T08   Fluidized bed incinerator
T09   Multiple hearth incinerator
T10   Infrared furnace incinerator
T11   Molten salt destructor
T12   Pyrolysis
T13   Wet air oxidation
T14   CalcinationT15   Microwave discharge
T18   Other (specify)

   (b)   Chemical Treatment-
Code  Type of Chemical Treatment
T19   Absorption mound
T20   Absorption field
T21   Chemical fixation
T22   Chemical oxidation
T23   Chemical precipitation
T24   Chemical reduction
T25   Chlorination
T26   Chlorinolysis
T27   Cyanide destruction
T28   Degradation
T29   Detoxification
T30   Ion exchange
T31   Neutralization
T32   Ozonation
T33   Photolysis
T34   Other (specify)

   (c)   Physical Treatment-
   (1) Separation of components:
Code  Type of Separation treatmen
T35   Centrifugation
T36   Clarification
T37   Coagulation
T38   Decanting
T39   Encapsulation
T40   Filtration
T41   Flocculation
T42   Flotation
T43   Foaming
T44   Sedimentation
T45   Thickening
T46   Ultrafiltration
T47   Other (specify)

   (2) Removal of Specific Components:
Code  Type of Removal Treatment
T48   Absorption-molecular sieve
T49   Activated carbon
T50   Blending
T51   Catalysis
T52   Crystallization
T53   Dialysis
T54   Distillation
T55   Electrodialysis
T56   Electrolysis
T57   Evaporation
T58   High gradient magnetic separation
T59   Leaching
T60   Liquid ion exchange
T61   Liquid-liquid extraction
T62   Reverse osmosis
T63   Solvent recovery
T64   Stripping
T65   Sand filter
T66   Other (specify)

   (d) Biological Treatment
Code  Type of Biological Treatment
T67   Activated sludge
T68   Aerobic lagoon
T69   Aerobic tank
T70   Anaerobic tank
T71   Composting
T72   Septic tank
T73   Spray irrigation
T74   Thickening filter
T75   Trickling filter
T76   Waste stabilization pond
T77   Other (specify)

   (e) Boilers and Industrial Furnaces
Code  Type of Boiler or Industrial Furnace
T80   BoilerT81   Cement Kiln
T82   Lime Kiln
T83   Aggregate Kiln
T84   Phosphate Kiln
T85   Coke Oven
T86   Blast Furnace
T87   Smelting, Melting, or Refining Furnace
T88   Titanium Dioxide Chloride Process Oxidation Reactor
T89   Methane Reforming Furnace
T90   Pulping Liquor Recovery Furnace
T91   Combustion Device Used in the Recovery of Sulfur
      Values from Spent Sulfuric Acid
T92   Halogen Acid Furnaces
T93   Other Industrial Furnaces Listed in Section R315-
      260.10 (specify)

   (f)   Other Treatment
Code  Other type of Treatment
T94   Containment Building (Treatment)

For Disposal
Code  Type of Disposal
D79   Underground Injection
D80   Landfill
D81   Land Treatment
D82   Ocean Disposal
D83   Surface Impoundment (to be closed as a landfill)
D99   Other Disposal (specify)

For Miscellaneous Sections R315-264-600 through 603 Units
Code  Unit type
X01   Open Burning/Open Detonation
X02   Mechanical Processing
X03   Thermal Unit
X04   Geologic Repository
X99   Other Sections R315-264-600 through 603 Units
      (specify)
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R315-264-1104. Appendix IV to Rule R315-264-Cochran's Approximation to the Behrens-Fisher Students' t-test.

40 CFR 264 Appendix IV, 2015 edition, is adopted and incorporated by reference.

R315-264-1105. Appendix V to Rule R315-264 -- Examples of Potentially Incompatible Waste.

Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment, such as (1) heat or pressure, (2) fire or explosion, (3) violent reaction, (4) toxic dusts, mists, fumes, or gases, or (5) flammable fumes or gases.

Below are examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one group with materials in another group. The list is intended as a guide to owners or operators of treatment, storage, and disposal facilities, and to enforcement and permit granting officials, to indicate the need for special precautions when managing these potentially incompatible waste materials or components.

This list is not intended to be exhaustive. An owner or operator shall, as the regulations require, adequately analyze his wastes so that he can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction, e.g., adding acid to water rather than water to acid, or that neutralizes them, e.g., a strong acid mixed with a strong base, or that controls substances produced, e.g., by generating flammable gases in a

closed tank equipped so that ignition cannot occur, and burning the gases in an incinerator.

In the lists below, the mixing of a Group A material with a Group B material may have the potential consequence as noted.

Table

Group 1-A

Acetylene sludge
Alkaline caustic liquids
Alkaline cleaner
Alkaline corrosive liquids
Alkaline corrosive battery fluid
Caustic wastewater
Lime sludge and other corrosive alkalies
Lime wastewaterLime and water
Spent caustic

Group 1-B

Acid sludge
Acid and water
Battery acid
Chemical cleaners
Electrolyte, acid
Etching acid liquid or solvent
Pickling liquor and other corrosive acids
Spent acid
Spent mixed acid
Spent sulfuric acid
Potential consequences: Heat generation; violent reaction.

Group 2-A

Aluminum
Beryllium
Calcium
Lithium
Magnesium
Potassium
Sodium
Zinc powder
Other reactive metals and metal hydrides

Group 2-B

Any waste in Group 1-A or
1-B
Potential consequences: Fire or explosion; generation of flammable
hydrogen gas.

Group 3-A

Alcohols
Water

Group 3-B

Any concentrated waste in Groups 1-A or 1-B
Calcium
Lithium
Metal hydrides
Potassium
SO2 Cl2, SOCl2, PCl3, CH3 SiCl3
Other water-reactive waste
Potential consequences: Fire, explosion, or heat generation;
generation of flammable or toxic gases.

Group 4-A

Alcohols
Aldehydes
Halogenated hydrocarbons
Nitrated hydrocarbons
Unsaturated hydrocarbons
Other reactive organic compounds and solvents

Group 4-B

Concentrated Group 1-A or 1-B wastes
Group 2-A wastes
Potential consequences: Fire, explosion, or violent reaction.

Group 5-A

Spent cyanide and sulfide solutions

Group 5-B

Group 1-B wastes
Potential consequences: Generation of toxic hydrogen cyanide or
hydrogen sulfide gas.

Group 6-A

Chlorates
Chlorine
Chlorites
Chromic acid
Hypochlorites
Nitrates
Nitric acid, fuming
Perchlorates
Permanganates
Peroxides
Other strong oxidizers

Group 6-B

Acetic acid and other organic acids
Concentrated mineral acids
Group 2-A wastes
Group 4-A wastes
Other flammable and combustible wastes
Potential consequences: Fire, explosion, or violent reaction.
Source: "Law, Regulations, and Guidelines for Handling of Hazardous
Waste." California Department of Health, February 1975.

(1) These include counties, city-county consolidations, and independent cities. In the case of Alaska, the political jurisdictions are election districts, and, in the case of Hawaii,
the political jurisdiction listed is the island of Hawaii.

R315-264-1106. Appendix VI to Rule R315-264 -- Political Jurisdictions within Utah in Which Compliance With Subsection R315-264-18(a) Shall Be Demonstrated.

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

R315-264-1107. Appendix IX to Rule R315-264 -- Ground-Water Monitoring List.

40 CFR 264 Appendix IX, 2015 edition, is adopted and incorporated by reference.

KEY: hazardous waste
June 10, 2016 **19-6-105**
19-6-106

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-273. Standards for Universal Waste Management.
R315-273-1. Standards for Universal Waste Management -- Scope.

(a) Rule R315-273 establishes requirements for managing the following:

(1) Batteries as described in Section R315-273-2;

(2) Pesticides as described in Section R315-273-3;

(3) Mercury-containing equipment as described in Section R315-273-4;

(4) Lamps as described in Section R315-273-5;

(5) Antifreeze as described in Subsection R315-273-6(a); and

(6) Aerosol cans as described in Subsection R315-273-6(b).

(b) Rule R315-273 provides an alternative set of management standards in lieu of regulation under Rules R315-260 through 266, 268, and 270. If a waste handler chooses to manage its universal waste under the Rule R315-273, but fails to meet requirements in this rule, the waste handler remains subject to, and shall comply with, all applicable requirements of Rules R315-260 through 266, 268, 270 and 124.

Note: Only wastes that are hazardous, i.e., are listed or exhibit one or more characteristics of hazardous waste, are subject to the Rule R315-273 universal waste regulations. Compliance with the reduced set of Rule R315-273 requirements is an option that waste handlers may choose for managing their universal wastes, batteries, pesticides, mercury-containing devices, aerosol cans, lamps, and antifreeze. If universal waste handlers wish, they may instead continue to manage these hazardous wastes under the full hazardous waste regulations for generators, transporters, and treatment, storage, and disposal facilities.

R315-273-2. Standards for Universal Waste Management -- Applicability-Batteries.

(a) Batteries covered under Section R315-273.

(1) The requirements of Rule R315-273 apply to persons managing batteries, as described in Section R315-273-9, except those listed in Section R315-273-2(b).

(2) Spent lead-acid batteries which are not managed under Section R315-266-80 are subject to management under Rule R315-273.

(b) Batteries not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under Section R315-266-80.

(2) Batteries, as described in Section R315-273-9, that are not yet wastes under Rule R315-261, including those that do not meet the criteria for waste generation in Subsection R315-273-2(c).

(3) Batteries, as described in Section R315-273-9 that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in Sections R315-261-20 through 24.

(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.

R315-273-3. Standards for Universal Waste Management -- Applicability-Pesticides.

(a) Pesticides covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing pesticides, as described in Section R315-273-9, meeting the following conditions, except those listed in Subsection R315-273-3(b):

(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 cancelled 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 Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in Subsection R315-273-3(a)(1), and unused pesticide products described in Subsection R315-273-3(a)(2), that are managed by farmers in compliance with Section R315-262-70. Section R315-262-70 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 Subsection R315-261-7(b)(3);

(2) Pesticides not meeting the conditions set forth in Subsection R315-273-3(a). These pesticides shall be managed in compliance with the hazardous waste regulations in Rules R315-260 through 266, 268, and 270;

(3) Pesticides that are not wastes under Rule R315-261, including those that do not meet the criteria for waste generation in Subsection R315-273-3(c) or those that are not wastes as described in Subsection R315-273-3(d); and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in Sections R315-261-30 through 35 or if it exhibits one or more of the characteristics identified in Sections R315-261-20 through 24.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in Subsection R315-273-3(a)(1) 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 Subsection R315-273-3(a)(2) 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 Subsection R315-273-3(a)(1), 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 Section R315-261.2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including Rule R315-273. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under Section R315-261-2, 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 Rule R315-273. 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 Subsection

R315-273-3(a)(2), if the generator of the unused pesticide product has not decided to discard, e.g., burn for energy recovery, them. These pesticides remain subject to the requirements of FIFRA.

R315-273-4. Standards for Universal Waste Management -- Applicability -- Mercury-Containing Equipment.

(a) Mercury-containing equipment covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing mercury-containing equipment, as described in Section R315-273-9, except those listed in Subsection R315-273-4(b).

(b) Mercury-containing equipment not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following mercury-containing equipment:

(1) Mercury-containing equipment that is not yet a waste under Rule R315-261. Subsection R315-273-4(c) describes when mercury-containing equipment becomes a waste;

(2) Mercury-containing equipment that is not a hazardous waste. Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in Sections R315-261-20 through 24 or is listed in Sections R315-261-30 through 35; and

(3) Equipment and devices from which the mercury-containing components have been removed.

(c) Generation of waste mercury-containing equipment.

(1) Used mercury-containing equipment becomes a waste on the date it is discarded.

(2) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

R315-273-5. Standards for Universal Waste Management -- Applicability-Lamps.

(a) Lamps covered under Rule R315-273. The requirements of Rule R315-273 apply to persons managing lamps as described in Section R315-273-9, except those listed in Subsection R315-273-5(b).

(b) Lamps not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following lamps:

(1) Lamps that are not yet wastes under Rule R315-261 as provided in Subsection R315-273-5(c).

(2) Lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in Sections R315-261-20 through 24.

(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.

R315-273-6. Standards for Universal Waste Management -- Applicability for Utah Specific Wastes.

(a) Antifreeze.

(1) The requirements of Rule R315-273 apply to persons managing antifreeze, as described in Section R315-273-9, except those listed in Subsection R315-273-6(a)(2).

(2) Antifreeze not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following antifreeze:

(i) Antifreeze, as described in Section R315-273-9,that is not yet a waste under Rule R315-261, including antifreeze that does not meet the criteria for waste generation in Subsection R315-273-6(a)(4).

(ii) Antifreeze, as described in Section R315-273-9 that is not hazardous waste. Antifreeze is a hazardous waste if it exhibits one or more of the characteristics identified in Sections R315-261-20 through 24.

(4) Generation of waste antifreeze.

(i) Antifreeze becomes a waste on the date it is discarded, e.g., when sent for reclamation.

(ii) Antifreeze becomes a waste on the date the handler decides to discard it.

(b) Aerosol Cans

(1) The requirements of Rule R315-273 apply to persons managing aerosol cans, as described in Section R315-273-9, except those listed in Subsection R315-273-6(b)(2).

(2) Aerosol cans not covered under Rule R315-273. The requirements of Rule R315-273 do not apply to persons managing the following aerosol cans:

(i) Aerosol cans, as described in Section R315-273-9, that are not yet wastes under Rule R315-261, including those that do not meet the criteria for waste generation in subsection R315-273(b)(3).

(ii) Aerosol cans, as described in Section R315-273-9, that are not hazardous waste. An aerosol can shall be managed as a hazardous waste if the can or its contents exhibit one or more of the characteristics identified in Sections R315-261-20 through 24, or if its contents are listed in Sections R315-261-30 through 35.

(3) Generation of waste aerosol cans.

(i) An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of Rule R315-273, an aerosol can is considered to be no longer useable when:

(A) the can is as empty as proper work practices allow;

(B) the spray mechanism no longer operates as designed;

(C) the propellant is spent; or

(D) the product is no longer used.

(ii) An unused aerosol can becomes a waste on the date the handler decides to discard it.

R315-273-8. Standards for Universal Waste Management -- 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 Rule R315-273:

(1) Household wastes that are exempt under Subsection R315-261-4(b)(1) and are also of the same type as the universal wastes defined at Section R315-273-9; and/or

(2) Conditionally exempt small quantity generator wastes that are exempt under Section R315-261-5 and are also of the same type as the universal wastes defined at Section R315-273-9.

(b) Persons who commingle the wastes described in Subsections R315-273-8(a)(1) and (a)(2) together with universal waste regulated under Rule R315-273 shall manage the commingled waste under the requirements of Rule R315-273.

R315-273-9. Standards for Universal Waste Management -- Definitions.

(a) "Aerosol can" means a container with a total capacity of no more than 24 ounces of gas under pressure and is used to aerate and dispense any material through a valve in the form of a spray or foam.

(b) "Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

(c) "Antifreeze" means an ethylene glycol based mixture that lowers the freezing point of water and is used as an engine coolant.

(d) "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.

(e) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsections R315-273-13(a) and (c) and Subsections R315-273-33(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.

(f) "Drum-top lamp crusher" means a device attached to a drum or container that mechanically reduces the size of lamps and includes a bag filter followed in series by a HEPA filter and an activated carbon filter. Drum-top crushers are the only devices that can be approved for the use of crushing lamps.

(g) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

(h) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

(i) "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, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(j) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in Section R315-273-9 who accumulates 5,000 kilograms or more total of universal waste; batteries, pesticides, mercury-containing equipment, lamps, or any other universal waste regulated in Rule R315-273, 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 the 5,000 kilogram limit is met or exceeded.

(k) "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.

(l) "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.

(m) "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 (1) or (2) above.

(n) "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this Section R315-273-9 who does not accumulate 5,000 kilograms or more of universal waste at any time.

(o) "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 Subsection R315-273-13(c)(2) or 33(c)(2).

(p) "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of Rule R315-273:

(1) Batteries as described in Section R315-273-2;

(2) Pesticides as described in Section R315-273-3;

(3) Mercury-containing equipment as described in Section R315-273-4;

(4) Lamps as described in Section R315-273-5;

(5) Antifreeze as described in Subsection R315-273-6(a); and

(6) Aerosol cans as described in Subsection R315-273-6(b).

(q) "Universal Waste Handler:"

(1) Means:

(i) A generator, as defined in Section R315-273-9, 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 Subsection R315-273-13(a) or (c), or 33(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.

(r) "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.

(s) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

R315-273-10. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Applicability.

Sections R315-273-10 through 20 apply to small quantity handlers of universal waste, as defined in Section R315-273-9 except that the registration requirement of Subsection R315-273-13(d)(3) and Subsections R315-273-13(d)(6) and (7) do not apply to generators.

R315-273-11. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- 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 R315-273-17; or by managing specific wastes as provided in Section R315-273-13.

R315-273-12. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Notification.

A small quantity handler of universal waste is not required to notify the Director of universal waste handling activities except as required under Subsection R315-273-13(3).

R315-273-13. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Waste Management.

(a) Batteries. A small quantity handler of universal waste shall 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 shall 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 shall be closed, structurally sound, compatible with the contents of the battery, and shall 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 shall 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, shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Rule R315-262.

(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) Pesticides. A small quantity handler of universal waste shall 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 shall 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 Subsection R315-273-13(b)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(b)(1); or

(3) A tank that meets the requirements of 40 CFR 265.190 through 202, except for 40 CFR 265.197(c) and 40 CFR 265.200 and 201, 40 CFR 265 is adopted by reference in R315-265; 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 shall 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 shall 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 shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall 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 and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the 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 that containment device to a container that meets the requirements of Section R315-262-34;

(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 Section R315-262-34;

(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;

(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 Subsection R315-273-13(c)(2); 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 shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24:

(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 shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, and 270. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it in compliance with Rule R315-262.

(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 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 small 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 small 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) A small quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps provided that the small quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the small quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) The lamps are crushed in a closed accumulation container designed specifically for crushing lamps;

(ii) The lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) The drum-top lamp crusher shall consist of a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) The drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) Filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) A spill clean-up kit is available;

(vii) The area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) An employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) An employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) An operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of all mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The small quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing of the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-13(d)(6).

(7) The small quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-13(d)(6) using one of the options in Subsections R315-261-143(a) through (e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-13(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with all applicable requirements of Rules R315-260 through 266 and 268.

(e) Antifreeze. A small quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the antifreeze, 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 Subsection R315-273-13(e)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1); or

(3) A tank that meets the requirements of 40 CFR 265.190 through 202, except for 40 CFR 265.197(c) and 40 CFR 265.200 and 201, 40 CFR 265 is adopted by reference in R315-265; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A small quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste or accelerant to the environment as follows:

(1) A small quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) A small quantity handler of universal waste may puncture universal waste aerosol cans to remove and collect the contents of the aerosol can provided the handler:

(i) Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;

(ii) Ensures that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture universal waste aerosol cans. This procedure shall include:

(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;

(B) operation and maintenance of the unit;

(C) segregation of incompatible wastes;

(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and

(E) waste characterization;

(iii) Ensures that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can-puncturing operation;

(iv) Immediately transfers the contents of the universal waste aerosol can, or puncturing device if applicable, to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and

(vi) Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(4)(i) A small quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.

(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.

(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

R315-273-14. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Labeling/Marking.

A small quantity handler of universal waste shall 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, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) are contained shall 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(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-3(a)(2) are contained shall 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 Subsection R315-273-14(c)(1)(i) 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 Subsections R315-273-14(c)(1)(i) and (ii) 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(s)" or "Waste-Pesticide(s)."

(d)(1) Universal waste mercury-containing equipment, i.e., each device, or a container in which the equipment is contained, shall 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 one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)".

(f) A container, tank, or transport vehicle or vessel in which antifreeze is contained shall be labeled or marked clearly with the words "Universal Waste- antifreeze" or "Waste- antifreeze."

(g) Universal waste aerosol cans, i.e., each can, or a container in which the universal waste aerosol cans are contained or accumulated, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Aerosol Can(s)", or "Waste Aerosol Can(s)".

R315-273-15. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- 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 Subsection R315-273-15(b) 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 shall 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 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.

R315-273-16. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Employee Training.

A small quantity handler of universal waste shall inform all employees who handle or have responsibility for managing universal waste. The information shall describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

R315-273-17. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Response to Releases.

(a) A small quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the material resulting from the release, and shall manage it in compliance with Rule R315-262.

R315-273-18. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- 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 shall comply with the transporter requirements of Sections R315-273-50 through 56 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 shall 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 shall 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 shall 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 shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

(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 shall immediately notify the Director of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Director shall 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.

R315-273-19. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Tracking Universal Waste Shipments.

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

R315-273-20. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Exports.

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in Subsection R315-262-58(a)(1), in which case the handler is subject to the requirements of Sections R315-262-80 through 89, shall:

(a) Comply with the requirements applicable to a

primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b) and Section R315-262-57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in Sections R315-262-50 through 58; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

R315-273-30. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Applicability.

Sections R315-273-30 through 40 apply to large quantity handlers of universal waste, as defined in Section R315-273-9 except that the registration requirement of Subsection R315-273-33(d)(3) and Subsections R315-273-33(d)(6) and (7) do not apply to generators.

R315-273-31. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- 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 R315-273-37; or by managing specific wastes as provided in Section R315-273-33.

R315-273-32. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Notification.

(a)(1) Except as provided in Subsections R315-273-32(a)(2) and (3), a large quantity handler of universal waste shall 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 Director of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section except as required in Subsection R315-273-33(d)(3).

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in Subsection R315-273-3(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 shall 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 the types of universal waste managed by the handler; and

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.

R315-273-33. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Waste Management.

(a) Batteries. A large quantity handler of universal waste shall 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 shall 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 shall be closed, structurally sound, compatible with the contents of the battery, 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 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 shall 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, shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Rule R315-262.

(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) Pesticides. A large quantity handler of universal waste shall 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 shall 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 Subsection R315-273-33(b)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-33(b)(1); or

(3) A tank that meets the requirements of 40 CFR 265.190 through 202, except for 40 CFR 265.197(c) and 40 CFR 265.200 and 201, 40 CFR 265 is adopted by reference in R315-265; 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 shall 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 shall 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 shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably 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 and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the 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 of broken ampules from that containment device to a container that meets the requirements of Section R315-262-34;

(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 Section R315-262-34;

(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;

(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 Subsection R315-273-33(c)(2); 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 shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24:

(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 shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it in compliance with Rule R315-262.

(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) A large quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps provided that the Large quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the large quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) The lamps are crushed in a closed accumulation container designed specifically for crushing lamps;

(ii) The lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) The drum-top lamp crusher shall consist of a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) The drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) Filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) A spill clean-up kit is available;

(vii) The area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) The employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) The employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) An operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of all mercury and other contaminants caused

by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The large quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-33(d)(6).

(7) The large quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-33(d)(6) using one of the options in Subsections R315-261-143(a) through (e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-33(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with all applicable requirements of Rules R315-260 through 266 and 268.

(e) Antifreeze. A large quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the antifreeze, 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 Subsection R315-273-13(e)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1); or

(3) A tank that meets the requirements of 40 CFR 265.190 through 202, except for 40 CFR 265.197(c) and 40 CFR 265.200 and 201, 40 CFR 265 is adopted by reference in R315-265; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A large quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste or accelerant to the environment as follows:

(1) A large quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, 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 may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) A large quantity handler of universal waste may puncture universal waste aerosol cans to remove and collect the contents of the aerosol can provided the handler:

(i) Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;

(ii) Ensures that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture universal waste aerosol cans. This procedure shall include:

(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;

(B) operation and maintenance of the unit;

(C) segregation of incompatible wastes;

(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and

(E) waste characterization;

(iii) Ensures that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can-puncturing operation;

(iv) Immediately transfers the contents of the universal waste aerosol can, or puncturing device if applicable, to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and

(vi) Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(4)(i) A large quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.

(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.

(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

R315-273-34. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Labeling/Marking.

A large quantity handler of universal waste shall 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, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in Subsection R315-273-3(a)(1) are contained shall 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(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in Subsection R315-273-3(a)(2) are contained shall 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 Subsection R315-273-34(c)(1)(i) 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 Subsections R315-273-34(c)(1)(i) and (1)(ii) is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)."

(d)(1) Mercury-containing equipment, i.e., each device, or a container in which the equipment is contained, shall 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)".

(f) A container, tank, or transport vehicle or vessel in which antifreeze is contained shall be labeled or marked clearly with the words "Universal Waste- antifreeze" or "Waste- antifreeze."

(g) Universal waste aerosol cans, i.e., each can, or a container in which the universal waste aerosol cans are contained or accumulated, shall be labeled or marked clearly with any one of the following phrases: "Universal Waste-Aerosol Can(s)", or "Waste Aerosol Can(s)".

R315-273-35. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- 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 Subsection R315-273-35(b) 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 shall 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 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.

R315-273-36. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Employee Training.

A large quantity handler of universal waste shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

R315-273-37. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Response To Releases.

(a) A large quantity handler of universal waste shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste shall determine whether any material resulting from the release is hazardous waste, and if so, shall manage the hazardous waste in compliance with all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the material resulting from the release, and is subject to Rule R315-262.

R315-273-38. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- 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 shall comply with the transporter requirements of Sections R315-273-50 through 56 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 shall 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 shall 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 shall 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 shall contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler shall:

(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 shall immediately notify the Director of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Director shall 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.

R315-273-39. Standards for Universal Waste Management, Standards For Large Quantity Handlers Of Universal Waste -- Tracking Universal Waste Shipments.

(a) Receipt of shipments. A large quantity handler of universal waste shall 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 shall 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;

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste shall 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 shall 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;

(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A large quantity handler of universal waste shall retain the records described in Subsection R315-273-39(a) for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste shall retain the records described in Subsection R315-273-39(b) for at least three years from the date a shipment of universal waste left the facility.

R315-273-40. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Exports.

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in Subsection R315-262-58(a)(1), in which case the handler is subject to the requirements of Sections R315-262-80 through 89, shall:

(a) Comply with the requirements applicable to a primary exporter in Section R315-262-53, Subsections R315-262-56(a)(1) through (4), (6), and (b) and Section R315-262-57;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in Sections R315-262-50 through 58; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

R315-273-50. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- Applicability.

Sections R315-273-50 through 56 apply to universal waste transporters, as defined in Section R315-273-9.

R315-273-51. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- 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 R315-273-54.

R315-273-52. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- Waste Management.

(a) A universal waste transporter shall 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 Rule R315-262. 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 Rule R315-262, 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".

R315-273-53. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- Storage 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 shall comply with the applicable requirements of Sections R315-273-10 through 20 and 30 through 40 while storing the universal waste.

R315-273-54. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- Response to Releases.

(a) A universal waste transporter shall immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter shall determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of Rules R315-260 through 266, 268 and 270. If the waste is determined to be a hazardous waste, the transporter is subject to Rule R315-262.

R315-273-55. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- 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 shall be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172.

R315-273-56. Standards for Universal Waste Management, Standards for Universal Waste Transporters -- Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in Subsection R315-262-58(a)(1), in which case the transporter is subject to the requirements of Sections R315-262-80 through 89, may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter shall 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.

R315-273-60. Standards for Universal Waste Management, Standards for Destination Facilities -- Applicability.

(a) The owner or operator of a destination facility, as defined in Section R315-273-9, is subject to all applicable requirements of Rules R315-264, 265, 266, 268, 270, and 124, 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 shall comply with Subsection R315-261-6(c)(2).

R315-273-61. Standards for Universal Waste Management, Standards for Destination Facilities -- 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 shall contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility shall:

(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 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 shall immediately notify the Director of the illegal shipment, and provide the name, address, and phone number of the shipper. The Director shall 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.

R315-273-62. Standards for Universal Waste Management, Standards for Destination Facilities -- Tracking Universal Waste Shipments.

(a) The owner or operator of a destination facility shall 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 shall 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;

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility shall retain the records described in Subsection R315-273-62(a) for at least three years from the date of receipt of a shipment of universal waste.

R315-273-70. Standards for Universal Waste Management -- Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of Rule R315-273, immediately after the waste enters the United States, as indicated in Subsection R315-273-70(a) through (c):

(a) A universal waste transporter is subject to the universal waste transporter requirements of Sections R315-273-50 through 56.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of Sections R315-273-10 through 20 or 30 through 40, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of Sections R315-273-60 through 62.

(d) Persons managing universal waste that is imported

from an OECD country as specified in Subsection R315-262-58(a)(1) are subject to Subsections R315-273-70(a) through (c), in addition to the requirements of Sections R315-262-80 through 89.

R315-273-80. Standards for Universal Waste Management, Petitions to Include Other Wastes Under Rule R315-273 -- General.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to Rule R315-273 may petition for a regulatory amendment under Sections R315-273-80 and 81 and Sections R315-260-20 and 23.

(b) To be successful, the petitioner shall demonstrate to the satisfaction of the Board that regulation under the universal waste regulations of Rule R315-273 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 shall include the information required by Subsection R315-260-20(b). The petition should also address as many of the factors listed in Section R315-273-81 as are appropriate for the waste or waste category addressed in the petition.

(c) The Board shall evaluate petitions using the factors listed in Section R315-273-81. The Board shall grant or deny a petition using the factors listed in Section R315-273-81. The decision shall be based on the weight of evidence showing that regulation under Rule R315-273 is appropriate for the waste or category of waste, shall improve management practices for the waste or category of waste, and shall improve implementation of the hazardous waste program.

(d) The Board may request additional information needed to evaluate the merits of the petition.

R315-273-81. Standards for Universal Waste Management -- Factors for Petitions to Include Other Wastes Under Rule R315-273.

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in Sections R315-261-30 through 3, or, if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in Sections R315-261-20 through 24. When a characteristic waste is added to the universal waste regulations of this Rule R315-273 by using a generic name to identify the waste category, e.g., batteries, the definition of universal waste in Section R315-260-10 and Section R315-273-9 shal 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 Rule R315-273;

(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 Sections R315-273-13, 33, and 52; and/or 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 Rule R315-273 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, municipal sewer or stormwater systems; to recycling; treatment; or disposal in compliance with Title 19 Chapter 6.

(g) Regulation of the waste or category of waste under Rule R315-273 will improve implementation of and compliance with the hazardous waste regulatory program; and/or

(h) Such other factors as may be appropriate.

KEY: hazardous waste
June 10, 2016 **19-6-105**
19-6-106

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-319. Coal Combustion Residuals Requirements.
R315-319-1. Permit Required.

(a) All landfills disposing of coal combustion residuals and surface impoundments containing coal combustion residuals shall have a permit for a Class I, II, or V landfill in accordance with Rules R315-302 through 307 or a coal combustion residuals permit issued under Rule R315-319.

(b) An application for a permit for a coal combustion residual landfill or surface impoundment or multiple landfills and impoundments at a facility covered by one permit shall be made to the Director.

(c)(1) An application for a permit a Coal Combustion Residue (CCR) unit shall contain the information required in Sections R315-319-60 through 107. No information need be submitted for which the effective date in Sections R315-319-60 through 107 has not been reached at the time of application submittal.

(2) All information required in Sections R315-319-60 through 107 with an effective date that falls later that the application submittal required in Subsection R315-319-1(c)(1) shall be submitted within six months of the effective date of the requirement found in Sections R315-319-60 through 107.

(d) Permit application procedures shall follow the requirements of Sections R315-310-1 and 2.

(e) Permit transfers shall follow the procedures of Section R315-310-11.

(f) Permit applicants shall follow the notification requirements of Subsection R315-310-3(2).

(g) Permit approvals shall follow the requirements of Rule R315-311.

(h) The Director approvals required in Sections R315-319-60 through 107 are satisfied by the issuance of a permit by the Director.

R315-319-2. Relation to Federal Coal Combustion Residuals Rule in 40 CFR 257.

(a) The compliance dates in 40 CFR 257 Subpart D are not affected by the requirements in Rule R315-319 for director approval except as the extensions allowed by 40CFR 256.26 may be applied by the Director.

R315-319-50. Scope and Applicability.

(a) Rule R315-319 establishes criteria for purposes managing coal combustion residuals in Utah.

(b) Rule R315-319 applies, except as provided in Subsection R315-319-50(i), to owners and operators of new and existing CCR units as defined in Subsection R315-319-53(a)(15). Rule R315-319 applies to any practice that does not meet the definition of a beneficial use of coal combustion residuals.

(c) Rule R315-319 applies to inactive CCR surface impoundments that have not closed prior to the effective date of Rule R315-319.

(d) Rule R315-319 does not apply to coal combustion residual landfills that have ceased receiving coal combustion residuals prior to October 19, 2015.

(e) Rule R315-319 does not apply to electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015.

(f) Rule R315-319 does not apply to fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels, including other fossil fuels, other than coal. Disposal of these solid wastes are covered by Rules R315-301 through 307.

(g) Rule R315-319 does not apply to practices that meet the definition of a beneficial use of coal combustion residuals.

(h) Rule R315-319 does not apply to coal combustion residual placement at active or abandoned underground or surface coal mines.

(i) Rule R315-319 does not apply to Class I or V solid waste landfills that receive coal combustion residuals.

R315-319-51. Effective Date.

The effective date of R315-319 will be based on the approval of the Waste Management and Radiation Control Board after publication in the Utah State Bulletin.

R315-319-52. Applicability of Other Regulations.

(a) Compliance with the requirements of Sections R315-319-50 through 107 does not affect the need for the owner or operator of a coal combustion residuals landfill, coal combustion residuals surface impoundment, or lateral expansion of a coal combustion residuals unit to comply with all other applicable federal, state, tribal, or local laws or other requirements.

(b) Any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit continues to be subject to the requirements in Section R315-302-2.

R315-319-53. Definitions.

(a) The following definitions apply to Rule R315-319. Terms not defined in Section R315-319-53 have the meaning given In R315-301.

(1) "Acre foot" means the volume of one acre of surface area to a depth of one foot.

(2) "Active facility or active electric utilities or independent power producers" means any facility subject to the requirements of Sections R315-319-50 through 107 that is in operation on October 14, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 14, 2015. An off-site disposal facility is in operation if it is accepting or managing CCR on or after October 14, 2015.

(3) "Active life or in operation" means the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with Section R315-319-102.

(4) "Active portion" means that part of the CCR unit that has received or is receiving CCR or non-CCR waste and that has not completed closure in accordance with Section R315-319-102.

(5) "Aquifer" means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(6) "Area-capacity curves" means graphic curves which readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

(7) "Areas susceptible to mass movement means those areas of influence, i.e., areas characterized as having an active or substantial possibility of mass movement, where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the CCR unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(8) "Beneficial use of CCR" means the CCR meet all of the following conditions:

(i) The CCR shall provide a functional benefit;

(ii) The CCR shall substitute for the use of a virgin

material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

(iii) The use of the CCR shall meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

(iv) When unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications, the user shall demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use in accordance with R315-101.

(9) "Closed" means placement of CCR in a CCR unit has ceased, and the owner or operator has completed closure of the CCR unit in accordance with Subsection R315-319-102 and has initiated post-closure care in accordance with Subsection R315-319-104.

(10) "Coal combustion residuals (CCR)" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(11) "CCR fugitive dust" means solid airborne particulate matter that contains or is derived from CCR, emitted from any source other than a stack or chimney.

(12) "CCR landfill or landfill" means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of Rule R315-319, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

(13) "CCR pile or pile" means any non-containerized accumulation of solid, non-flowing CCR that is placed on the land. CCR that is beneficially used off-site is not a CCR pile.

(14) "CCR surface impoundment or impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

(15) "CCR unit" means any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified.

(16) "Dike" means an embankment, berm, or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(17) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(18) "Disposal" is defined in 19-6-102(7); disposal does not include the storage or the beneficial use of CCR.

(19) "Downstream toe" means the junction of the downstream slope or face of the CCR surface impoundment with the ground surface.

(20) "Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix that minimizes its mobilization into the surrounding environment.

(21) "Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 14, 2015, or for which construction commenced prior to October 14, 2015 and receives CCR on or after October 14, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 14, 2015.

(22) "Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 14, 2015, or for which construction commenced prior to October 14, 2015 and receives CCR on or after October 14, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 14, 2015.

(23) "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(24) "Factor of safety, Safety factor," means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

(25) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(26) "Flood hydrograph" means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

(27) "Freeboard" means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

(28) "Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

(29) "Groundwater" means water below the land surface in a zone of saturation.

(30) "Hazard potential classification" means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential CCR surface impoundment, which terms mean:

(i) High hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation will probably cause loss of human life.

(ii) Low hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life and low economic and/or environmental losses. Losses are principally limited to the surface impoundment owner's property.

(iii) Significant hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

(31) "Height" means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

(32) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at 11,700 years before present, to present.

(33) "Hydraulic conductivity" means the rate at which water can move through a permeable medium, i.e., the coefficient of permeability.

(34) "Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 14, 2015 and still contains both CCR and liquids on or after October 14, 2015.

(35) "Incised CCR surface impoundment" means a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

(36) "Inflow design flood" means the flood hydrograph that is used in the design or modification of the CCR surface impoundments and its appurtenant works.

(37) "In operation" means the same as active life.

(38) "Karst terrain" means an area where karst topography, with its characteristic erosional surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, dolines, collapse shafts (sinkholes), sinking streams, caves, seeps, large springs, and blind valleys.

(39) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 14, 2015.

(40) "Liquefaction factor of safety" means the factor of safety, safety factor, determined using analysis under liquefaction conditions.

(41) "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 man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(42) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a 98% or greater probability that the acceleration will not be exceeded in 50 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(43) New CCR landfill means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 14, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 14, 2015. Overfills are also considered new CCR landfills.

(44) "New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 14, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 14, 2015.

(45) "Operator" means the person(s) responsible for the overall operation of a CCR unit.

(46) "Overfill" means a new CCR landfill constructed over a closed CCR surface impoundment.

(47) "Owner" means the person(s) who owns a CCR unit or part of a CCR unit.

(48) "Poor foundation conditions" mean 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 an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in Subsections R315-319-73(e) and 74(e) would cause a poor foundation condition.

(49) "Probable maximum flood" means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

(50) "Qualified person" means a person or persons trained to recognize specific appearances of structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

(51) "Qualified professional engineer" means an individual who is licensed by Utah as a Professional Engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge and experience to make the specific technical certifications required under Sections R315-319-50 through 107.

(52) "Recognized and generally accepted good engineering practices" means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

(53) "Retrofit" means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in Section R315-319-72

(54) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, and groundwater, which can be expected to exhibit the average properties of the universe or whole. See EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, Chapter 9, available at http://www.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm, for a discussion and examples of representative samples.

(55) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a CCR landfill or lateral expansion of a CCR landfill.

(56) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a CCR landfill or lateral expansion of a CCR landfill.

(57) "Sand and gravel pit or quarry" means an excavation for the extraction of aggregate, minerals or metals. The term sand and gravel pit and/or quarry does not include subsurface or surface coal mines.

(58) "Seismic factor of safety" means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a 2% probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the U.S. Geological Survey (USGS) seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

(59) "Seismic impact zone" means an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 50 years.

(60) "Slope protection" means engineered or non-engineered measures installed on the upstream or downstream slope of the CCR surface impoundment to protect the slope against wave action or erosion, including but not limited to rock riprap, wooden pile, or concrete revetments, vegetated

wave berms, concrete facing, gabions, geotextiles, or fascines.

(61) "Solid waste management or management" means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

(62) State means the State of Utah unless otherwise indicated.

(63) State Director or Director means the director of the Division of Waste Management and Radiation Control.

(64) "Static factor of safety" means the factor of safety, safety factor, determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

(65) "Structural components" mean liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood control systems, and any other component used in the construction and operation of the CCR unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

(66) "Unstable area means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(67) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

(68) "Waste boundary" means a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.

R315-319-60. Location Restrictions.

Placement above the uppermost aquifer.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall be constructed with a base that is located no less than 1.52 meters, five feet, above the upper limit of the uppermost aquifer, or shall demonstrate that there will not be an intermittent, recurring, or sustained hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations, including the seasonal high water table. The owner or operator shall demonstrate by the dates specified in Subsection R315-319-60(c) that the CCR unit meets the minimum requirements for placement above the uppermost aquifer.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-60(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-60(a) by the date specified in either Subsection R315-319-60(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-60(a) when the demonstration has been submitted to and has received approval from the Director and is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-60(a) by the date specified in Subsection R315-319-60(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-60(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the internet requirements specified in Subsection R315-319-107(e).

R315-319-61. Wetlands.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located in wetlands, as defined in Section R315-301-2, unless the owner or operator demonstrates by the dates specified in Rule R315-319 (c) that the CCR unit meets the requirements of Subsections R315-319-61(a)(1) through (5).

(1) Where applicable under section 404 of the Clean Water Act or applicable Utah wetlands laws, a clear and objective rebuttal of the presumption that an alternative to the CCR unit is reasonably available that does not involve wetlands.

(2) The construction and operation of the CCR unit will not cause or contribute to any of the following:

(i) A violation of any applicable Utah or federal water quality standard;

(ii) A violation of any applicable toxic effluent standard or prohibition under section 307 of the Clean Water Act; and

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973.

(3) The CCR unit will not cause or contribute to significant degradation of wetlands by addressing all of the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the CCR unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the CCR unit;

(iii) The volume and chemical nature of the CCR;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of CCR;

(v) The potential effects of catastrophic release of CCR to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) 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 reasonable as required by Subsections R315-319-61(a)(1) through (3), then minimizing unavoidable impacts to the maximum extent reasonable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and reasonable compensatory mitigation actions, e.g., restoration of existing degraded

wetlands or creation of man-made wetlands; and

(5) Sufficient information is available to make a reasoned determination with respect to the demonstrations in Subsections R315-319-61(a)(1) through (4).

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-61(a).

(c) The owner or operator of the CCR unit shall complete the demonstrations required by Subsection R315-319-61(a) by the date specified in either Subsection R315-319-61(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-61(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-61(a) by the date specified in Subsection R315-319-61(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstrations showing compliance with the requirements of Subsection R315-319-61(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-62. Fault Areas.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located within 60 meters, 200 feet, of the outermost damage zone of a fault that has had displacement in Holocene time unless the owner or operator demonstrates by the dates specified in Subsection R315-319-62(c) that an alternative setback distance of less than 60 meters, 200 feet, will prevent damage to the structural integrity of the CCR unit.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-62(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-62(a) by the date specified in either Subsection R315-319-62(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-62(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-62(a) by the date specified in Subsection R315-319-62(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-62 (a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-63. Seismic Impact Zones.

(a) New CCR landfills, existing and new CCR surface impoundments, and all lateral expansions of CCR units shall not be located in seismic impact zones unless the owner or operator demonstrates by the dates specified in Subsection R315-319-63(c) that all structural components including liners, leachate collection and removal systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-63(a).

(c) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-63(a) by the date specified in either Subsection R315-319-63(c)(1) or (2).

(1) For an existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-63(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment who fails to demonstrate compliance with the requirements of Subsection R315-319-63(a) by the date specified in Subsection R315-319-63(c)(1) is subject to the requirements of Subsection R315-319-101(b)(1).

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-63(a) is prohibited from placing CCR in the CCR unit.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-64. Unstable Areas.

(a) An existing or new CCR landfill, existing or new CCR surface impoundment, or any lateral expansion of a CCR unit shall not be located in an unstable area unless the owner or operator demonstrates by the dates specified in

Subsection R315-319-64(d) that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted.

(b) The owner or operator shall consider all of the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events, both surface and subsurface.

(c) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the demonstration meets the requirements of Subsection R315-319-64(a).

(d) The owner or operator of the CCR unit shall complete the demonstration required by Subsection R315-319-64(a) by the date specified in either Subsection R315-319-64(d)(1) or (2).

(1) For an existing CCR landfill or existing CCR surface impoundment, the owner or operator shall complete the demonstration no later than October 17, 2018.

(2) For a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit, the owner or operator shall complete the demonstration no later than the date of initial receipt of CCR in the CCR unit.

(3) The owner or operator has completed the demonstration required by Subsection R315-319-64(a) when the demonstration has been submitted to and has received approval from the Director and the demonstration is placed in the facility's operating record as required by Subsection R315-319-105(e).

(4) An owner or operator of an existing CCR surface impoundment or existing CCR landfill who fails to demonstrate compliance with the requirements of Subsection R315-319-64(a) by the date specified in Subsection R315-319-64(d)(1) is subject to the requirements of Subsection R315-319-101(b)(1) or (d)(1), respectively.

(5) An owner or operator of a new CCR landfill, new CCR surface impoundment, or any lateral expansion of a CCR unit who fails to make the demonstration showing compliance with the requirements of Subsection R315-319-64(a) is prohibited from placing CCR in the CCR unit.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(e), the notification requirements specified in Subsection R315-319-106(e), and the Internet requirements specified in Subsection R315-319-107(e).

R315-319-70. Design Criteria for New CCR Landfills and Any Lateral Expansion of a CCR Landfill.

(a)(1) New CCR landfills and any lateral expansion of a CCR landfill shall be designed, constructed, operated, and maintained with either a composite liner that meets the requirements of Subsection R315-319-70(b) or an alternative composite liner that meets the requirements in Subsection R315-319-70(c), and a leachate collection and removal system that meets the requirements of Subsection R315-319-70(d).

(2) Prior to construction of an overfill the underlying surface impoundment shall meet the requirements of Subsection R315-319-102(d).

(b) A composite liner shall consist of two components; the upper component consisting of, at a minimum, a 30-mil geomembrane liner (GM), and the lower component consisting of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1 x 10-7 centimeters per second (cm/sec). GM components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The GM or upper liner component shall be installed in direct and uniform contact with the compacted soil or lower liner component. The composite 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 CCR or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) Constructed of materials that provide appropriate shear resistance of the upper and lower component interface to prevent sliding of the upper component including on slopes;

(3) 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

(4) Installed to cover all surrounding earth likely to be in contact with the CCR or leachate.

(c) If the owner or operator elects to install an alternative composite liner, all of the following requirements shall be met:

(1) An alternative composite liner shall consist of two components; the upper component consisting of, at a minimum, a 30-mil GM, and a lower component, that is not a geomembrane, with a liquid flow rate no greater than the liquid flow rate of two feet of compacted soil with a hydraulic conductivity of no more than 1 x 10-7 cm/sec. GM components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. If the lower component of the alternative liner is compacted soil, the GM shall be installed in direct and uniform contact with the compacted soil.

(2) The owner or operator shall obtain certification from a qualified professional engineer that the liquid flow rate through the lower component of the alternative composite liner is no greater than the liquid flow rate through two feet of compacted soil with a hydraulic conductivity of 1 x 10-7 cm/sec. The hydraulic conductivity for the two feet of compacted soil used in the comparison shall be no greater than 1 x 10-7 cm/sec. The hydraulic conductivity of any alternative to the two feet of compacted soil shall be determined using recognized and generally accepted methods. The liquid flow rate comparison shall be made using Equation 1 of Section R315-319-70, which is derived from Darcy's Law for gravity flow through porous media.

Equation 1

$Q/A=q=k(h/t+1)$

Where,

Q = flow rate, cubic centimeters/second;

A = surface area of the liner, squared centimeters;

q = flow rate per unit area, cubic centimeters/second/squared centimeter;

k = hydraulic conductivity of the liner, centimeters/second;

h = hydraulic head above the liner, centimeters; and

t = thickness of the liner, centimeters.

(3) The alternative composite liner shall meet the requirements specified in Subsections R315-319-70(b)(1) through (4).

(d) The leachate collection and removal system 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 leachate collection and removal system shall be:

(1) Designed and operated to maintain less than a 30-

centimeter depth of leachate over the composite liner or alternative composite liner;

(2) Constructed of materials that are chemically resistant to the CCR and any non-CCR waste managed in the CCR unit and the leachate expected to be generated, and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying waste, waste cover materials, and equipment used at the CCR unit; and

(3) Designed and operated to minimize clogging during the active life and post-closure care period.

(e) Prior to construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer that the design of the composite liner; or, if applicable, alternative composite liner; and the leachate collection and removal system meets the requirements of Section R315-319-70.

(f) Upon completion of construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator shall obtain a certification from a qualified professional engineer that the composite liner; or, if applicable, alternative composite liner; and the leachate collection and removal system has been constructed in accordance with the requirements of Section R315-319-70.

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-71. Liner Design Criteria for Existing CCR Surface Impoundments.

(a)(1) No later than October 17, 2016, the owner or operator of an existing CCR surface impoundment shall document whether or not such unit was constructed with any one of the following:

(i) A liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than 1 x 10-7 cm/sec;

(ii) A composite liner that meets the requirements of Subsection R315-319-70(b); or

(iii) An alternative composite liner that meets the requirements of Subsection R315-319-70(c).

(2) The hydraulic conductivity of the compacted soil shall be determined using recognized and generally accepted methods.

(3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:

(i) The owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of Subsection R315-319-71(a)(1)(i), (ii), or (iii); or

(ii) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of Subsection R315-319-71 (a)(1)(i), (ii), or (iii).

(4) All existing unlined CCR surface impoundments are subject to the requirements of Subsection R315-319-101(a).

(b) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer attesting that the documentation as to whether a CCR unit meets the requirements of Subsection R315-319-71(a) is accurate.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-72. Liner Design Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) New CCR surface impoundments and lateral expansions of existing and new CCR surface impoundments shall be designed, constructed, operated, and maintained with either a composite liner or an alternative composite liner that meets the requirements of Subsection R315-319-70(b) or (c).

(b) Any liner specified in Section R315-319-72 shall be installed to cover all surrounding earth likely to be in contact with CCR. Dikes shall not be constructed on top of the composite liner.

(c) Prior to construction of the CCR surface impoundment or any lateral expansion of a CCR surface impoundment, the owner or operator shall obtain certification from a qualified professional engineer that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of Section R315-319-72.

(d) Upon completion, the owner or operator shall obtain certification from a qualified professional engineer that the composite liner or if applicable, the alternative composite liner has been constructed in accordance with the requirements of Section R315-319-72.

(e) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the Internet requirements specified in Subsection R315-319-107(f).

R315-319-73. Structural Integrity Criteria for Existing CCR Surface Impoundments.

(a) The requirements of Subsections R315-319-73(a)(1) through (4) apply to all existing CCR surface impoundments, except for those existing CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-73(a)(1) through (4).

(1) No later than, December 17, 2015, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-73(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-73(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-73.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. No later than April 17, 2017, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-73(a)(2) shall prepare and maintain a

written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-73(a)(3)(i) may amend the written EAP at any time provided the revised plan is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-73(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation is has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare a written EAP for the CCR unit as required by Subsection R315-319-73(a)(3)(i) within six months of completing such periodic hazard potential assessment and submit the EAP to the Director for approval.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-73(a)(3) and submit the certification to the Director.

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-73(c) through (e) apply to an owner or operator of an existing CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than October 17, 2016, the owner or operator of the CCR unit shall compile and submit to the Director a history of construction, which shall contain, to the extent feasible, the information specified in Subsections R315-319-73(c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 71/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the approximate dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes to the history of construction. If there is a significant change to any information compiled under Subsection R315-319-73(c)(1), the owner or operator of the CCR unit shall update the relevant information, submit it to the Director, and place it in the facility's operating record as required by Subsection R315-319-105(f)(9).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the

maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-73(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-73(d)(1)(v)(B).

(A) All spillways shall be either:

(I) Of non-erodible construction and designed to carry sustained flows; or

(II) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

(I) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(II) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(III) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-73(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken and submit the documentation to the Director.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-73 and submit the certification to the Director.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct and submit to the Director an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(ii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iii) The calculated seismic factor of safety shall equal or exceed 1.00.

(iv) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-73(e)(1) meets the requirements of Section R315-319-73.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-73(f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-73(a)(2), (d), and (e) no later than October 17, 2016. The owner or operator has completed an initial assessment when the owner or operator has and submit to the Director and placed the assessment required by Subsections R315-319-73(a)(2), (d), and (e) in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(2) Use of a previously completed assessment(s) in lieu of the initial assessment(s). The owner or operator of the CCR unit may elect to use a previously completed assessment to serve as the initial assessment required by Subsections R315-319-73(a)(2), (d), and (e) provided that the previously completed assessment(s):

(i) Was completed no earlier than 42 months prior to October 17, 2016; and

(ii) Meets the applicable requirements of Subsections R315-319-73 (a)(2), (d), and (e).

(3) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct and complete and submit to the Director the assessments required by Subsections R315-319-73 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. If the owner or operator elects to use a previously completed assessment(s) in lieu of the initial assessment as provided by Subsection R315-319-73 (f)(2), the date of the report for the previously completed assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator submits the assessment to the Director and places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-73(f)(3), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-73 (a)(2), (d), and (e) has been submitted and approved by the Director and has been placed in the facility's operating record as required by Subsections R315-319-105(f)(5), (10), and (12).

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely safety factor assessment or fails to demonstrate minimum safety factors as

required by Subsection R315-319-73 (e) is subject to the requirements of Subsection R315-319-101(b)(2).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-74. Structural Integrity Criteria for New CCR Surface Impoundments and Any Lateral Expansion of a CCR Surface Impoundment.

(a) The requirements of Subsections R315-319-74(a)(1) through (4) apply to all new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, except for those new CCR surface impoundments that are incised CCR units. If an incised CCR surface impoundment is subsequently modified, e.g., a dike is constructed, such that the CCR unit no longer meets the definition of an incised CCR unit, the CCR unit is subject to the requirements of Subsections R315-319-74(a)(1) through (4).

(1) No later than the initial receipt of CCR, the owner or operator of the CCR unit shall place on or immediately adjacent to the CCR unit a permanent identification marker, at least six feet high showing the identification number of the CCR unit, if one has been assigned by the state, the name associated with the CCR unit and the name of the owner or operator of the CCR unit.

(2) Periodic hazard potential classification assessments.

(i) The owner or operator of the CCR unit shall conduct initial and periodic hazard potential classification assessments of the CCR unit according to the timeframes specified in Subsection R315-319-74(f). The owner or operator shall document the hazard potential classification of each CCR unit as either a high hazard potential CCR surface impoundment, a significant hazard potential CCR surface impoundment, or a low hazard potential CCR surface impoundment. The owner or operator shall also document the basis for each hazard potential classification.

(ii) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial hazard potential classification and each subsequent periodic classification specified in Subsection R315-319-74(a)(2)(i) was conducted in accordance with the requirements of Section R315-319-74.

(3) Emergency Action Plan (EAP)

(i) Development of the plan. Prior to the initial receipt of CCR in the CCR unit, the owner or operator of a CCR unit determined to be either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment under Subsection R315-319-74 (a)(2) shall prepare, and maintain a written EAP. At a minimum, the EAP shall:

(A) Define the events or circumstances involving the CCR unit that represent a safety emergency, along with a description of the procedures that will be followed to detect a safety emergency in a timely manner;

(B) Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit;

(C) Provide contact information of emergency responders;

(D) Include a map which delineates the downstream area which would be affected in the event of a CCR unit failure and a physical description of the CCR unit; and

(E) Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders.

(ii) Amendment of the plan.

(A) The owner or operator of a CCR unit subject to the requirements of Subsection R315-319-74(a)(3)(i) may amend the written EAP at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(f)(6). The owner or operator shall amend the written EAP whenever there is a change in conditions that would substantially affect the EAP in effect.

(B) The written EAP shall be evaluated, at a minimum, every five years to ensure the information required in Subsection R315-319-74(a)(3)(i) is accurate. As necessary, the EAP shall be updated and a revised EAP placed in the facility's operating record as required by Subsection R315-319-105(f)(6).

(iii) Changes in hazard potential classification.

(A) If the owner or operator of a CCR unit determines during a periodic hazard potential assessment that the CCR unit is no longer classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit is no longer subject to the requirement to prepare and maintain a written EAP beginning on the date the periodic hazard potential assessment documentation has been submitted to and has received approval from the Director and placed in the facility's operating record as required by Subsection R315-319-105(f)(5).

(B) If the owner or operator of a CCR unit classified as a low hazard potential CCR surface impoundment subsequently determines that the CCR unit is properly re-classified as either a high hazard potential CCR surface impoundment or a significant hazard potential CCR surface impoundment, then the owner or operator of the CCR unit shall prepare and submit to the Director a written EAP for the CCR unit as required by Subsection R315-319-74(a)(3)(i) within six months of completing such periodic hazard potential assessment.

(iv) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the written EAP, and any subsequent amendment of the EAP, meets the requirements of Subsection R315-319-74(a)(3).

(v) Activation of the EAP. The EAP shall be implemented once events or circumstances involving the CCR unit that represent a safety emergency are detected, including conditions identified during periodic structural stability assessments, annual inspections, and inspections by a qualified person.

(4) The CCR unit and surrounding areas shall be designed, constructed, operated, and maintained with vegetated slopes of dikes except for slopes which are protected with an alternate form(s) of slope protection.

(b) The requirements of Subsections R315-319-74(c) through (e) apply to an owner or operator of a new CCR surface impoundment and any lateral expansion of a CCR surface impoundment that either:

(1) Has a height of five feet or more and a storage volume of 20 acre-feet or more; or

(2) Has a height of 20 feet or more.

(c)(1) No later than the initial receipt of CCR in the CCR unit, the owner or operator unit shall compile the design and construction plans for the CCR unit, which shall include, to the extent feasible, the information specified in Subsection R315-319-74 (c)(1)(i) through (xi).

(i) The name and address of the person(s) owning or operating the CCR unit; the name associated with the CCR unit; and the identification number of the CCR unit if one has been assigned by the state.

(ii) The location of the CCR unit identified on the most recent U.S. Geological Survey (USGS) 71/2 minute or 15 minute topographic quadrangle map, or a topographic map of equivalent scale if a USGS map is not available.

(iii) A statement of the purpose for which the CCR unit is being used.

(iv) The name and size in acres of the watershed within which the CCR unit is located.

(v) A description of the physical and engineering properties of the foundation and abutment materials on which the CCR unit is constructed.

(vi) A statement of the type, size, range, and physical and engineering properties of the materials used in constructing each zone or stage of the CCR unit; the method of site preparation and construction of each zone of the CCR unit; and the dates of construction of each successive stage of construction of the CCR unit.

(vii) At a scale that details engineering structures and appurtenances relevant to the design, construction, operation, and maintenance of the CCR unit, detailed dimensional drawings of the CCR unit, including a plan view and cross sections of the length and width of the CCR unit, showing all zones, foundation improvements, drainage provisions, spillways, diversion ditches, outlets, instrument locations, and slope protection, in addition to the normal operating pool surface elevation and the maximum pool surface elevation following peak discharge from the inflow design flood, the expected maximum depth of CCR within the CCR surface impoundment, and any identifiable natural or manmade features that could adversely affect operation of the CCR unit due to malfunction or mis-operation.

(viii) A description of the type, purpose, and location of existing instrumentation.

(ix) Area-capacity curves for the CCR unit.

(x) A description of each spillway and diversion design features and capacities and calculations used in their determination.

(xi) The construction specifications and provisions for surveillance, maintenance, and repair of the CCR unit.

(xii) Any record or knowledge of structural instability of the CCR unit.

(2) Changes in the design and construction. If there is a significant change to any information compiled under Subsection R315-319-74 (c)(1), the owner or operator of the CCR unit shall update the relevant information and place it in the facility's operating record as required by Subsection R315-319-105(f)(13).

(d) Periodic structural stability assessments.

(1) The owner or operator of the CCR unit shall conduct initial and periodic structural stability assessments and document whether the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering practices for the maximum volume of CCR and CCR wastewater which can be impounded therein. The assessment shall, at a minimum, document whether the CCR unit has been designed, constructed, operated, and maintained with:

(i) Stable foundations and abutments;

(ii) Adequate slope protection to protect against surface erosion, wave action, and adverse effects of sudden drawdown;

(iii) Dikes mechanically compacted to a density sufficient to withstand the range of loading conditions in the CCR unit;

(iv) Vegetated slopes of dikes and surrounding areas except for slopes which have an alternate form or forms of slope protection;

(v) A single spillway or a combination of spillways configured as specified in Subsection R315-319-74(d)(1)(v)(A). The combined capacity of all spillways shall be designed, constructed, operated, and maintained to adequately manage flow during and following the peak discharge from the event specified in Subsection R315-319-74 (d)(1)(v)(B).

(A) All spillways shall be either:

(I) Of non-erodible construction and designed to carry sustained flows; or

(II) Earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(B) The combined capacity of all spillways shall adequately manage flow during and following the peak discharge from a:

(I) Probable maximum flood (PMF) for a high hazard potential CCR surface impoundment; or

(II) 1000-year flood for a significant hazard potential CCR surface impoundment; or

(III) 100-year flood for a low hazard potential CCR surface impoundment.

(vi) Hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit that maintain structural integrity and are free of significant deterioration, deformation, distortion, bedding deficiencies, sedimentation, and debris which may negatively affect the operation of the hydraulic structure; and

(vii) For CCR units with downstream slopes which can be inundated by the pool of an adjacent water body, such as a river, stream or lake, downstream slopes that maintain structural stability during low pool of the adjacent water body or sudden drawdown of the adjacent water body.

(2) The periodic assessment described in Subsection R315-319-74(d)(1) shall identify any structural stability deficiencies associated with the CCR unit in addition to recommending corrective measures. If a deficiency or a release is identified during the periodic assessment, the owner or operator unit shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(3) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment was conducted in accordance with the requirements of Section R315-319-74.

(e) Periodic safety factor assessments.

(1) The owner or operator shall conduct an initial and periodic safety factor assessments for each CCR unit and document whether the calculated factors of safety for each CCR unit achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v) for the critical cross section of the embankment. The critical cross section is the cross section anticipated to be the most susceptible of all cross sections to structural failure based on appropriate engineering considerations, including loading conditions. The safety factor assessments shall be supported by appropriate engineering calculations.

(i) The calculated static factor of safety under the end-of-construction loading condition shall equal or exceed 1.30. The assessment of this loading condition is only required for the initial safety factor assessment and is not required for subsequent assessments.

(ii) The calculated static factor of safety under the long-term, maximum storage pool loading condition shall equal or exceed 1.50.

(iii) The calculated static factor of safety under the maximum surcharge pool loading condition shall equal or exceed 1.40.

(iv) The calculated seismic factor of safety shall equal or exceed 1.00.

(v) For dikes constructed of soils that have susceptibility to liquefaction, the calculated liquefaction factor of safety shall equal or exceed 1.20.

(2) The owner or operator of the CCR unit shall obtain a

certification from a qualified professional engineer stating that the initial assessment and each subsequent periodic assessment specified in Subsection R315-319-74(e)(1) meets the requirements of Section R315-319-74.

(f) Timeframes for periodic assessments

(1) Initial assessments. Except as provided by Subsection R315-319-74 (f)(2), the owner or operator of the CCR unit shall complete the initial assessments required by Subsections R315-319-74(a)(2), (d), and (e) prior to the initial receipt of CCR in the unit. The owner or operator has completed an initial assessment when the owner or operator has placed the assessment required by Subsections R315-319-74 (a)(2), (d), and (e) in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(2) Frequency for conducting periodic assessments. The owner or operator of the CCR unit shall conduct, complete the assessments required by Subsections R315-319-74 (a)(2), (d), and (e) every five years. The date of completing the initial assessment is the basis for establishing the deadline to complete the first subsequent assessment. The owner or operator may complete any required assessment prior to the required deadline provided the owner or operator places the completed assessment(s) into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent assessments is based on the date of completing the previous assessment. For purposes of Subsection R315-319-74 (f)(2), the owner or operator has completed an assessment when the relevant assessment(s) required by Subsections R315-319-74 (a)(2), (d), and (e) has been placed in the facility's operating record as required by Subsection R315-319-105(f)(5), (10), and (12).

(3) Failure to document minimum safety factors during the initial assessment. Until the date an owner or operator of a CCR unit documents that the calculated factors of safety achieve the minimum safety factors specified in Subsections R315-319-74 (e)(1)(i) through (v), the owner or operator is prohibited from placing CCR in such unit.

(4) Closure of the CCR unit. An owner or operator of a CCR unit who either fails to complete a timely periodic safety factor assessment or fails to demonstrate minimum safety factors as required by Subsection R315-319-74 (e) is subject to the requirements of Subsection R315-319-101(c).

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(f), the notification requirements specified in Subsection R315-319-106(f), and the internet requirements specified in Subsection R315-319-107(f).

R315-319-80. Operating Criteria - Air Criteria.

(a) The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall adopt measures that will effectively minimize CCR from becoming airborne at the facility, including CCR fugitive dust originating from CCR units, roads, and other CCR management and material handling activities.

(b) CCR fugitive dust control plan. The owner or operator of the CCR unit shall prepare and operate in accordance with a CCR fugitive dust control plan has been submitted to and has received approval from the Director and as specified in Subsections R315-319-80(b)(1) through (7). This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act.

(1) The CCR fugitive dust control plan shall identify and describe the CCR fugitive dust control measures the owner or operator will use to minimize CCR from becoming airborne at the facility. The owner or operator shall select, and include in the CCR fugitive dust control plan, the CCR fugitive dust control measures that are most appropriate for site conditions, along with an explanation of how the measures selected are applicable and appropriate for site conditions. Examples of control measures that may be appropriate include: Locating CCR inside an enclosure or partial enclosure; operating a water spray or fogging system; reducing fall distances at material drop points; using wind barriers, compaction, or vegetative covers; establishing and enforcing reduced vehicle speed limits; paving and sweeping roads; covering trucks transporting CCR; reducing or halting operations during high wind events; or applying a daily cover.

(2) If the owner or operator operates a CCR landfill or any lateral expansion of a CCR landfill, the CCR fugitive dust control plan shall include procedures to emplace CCR as conditioned CCR. Conditioned CCR means wetting CCR with water to a moisture content that will prevent wind dispersal, but will not result in free liquids. In lieu of water, CCR conditioning may be accomplished with an appropriate chemical dust suppression agent.

(3) The CCR fugitive dust control plan shall include procedures to log citizen complaints received by the owner or operator involving CCR fugitive dust events at the facility.

(4) The CCR fugitive dust control plan shall include a description of the procedures the owner or operator will follow to periodically assess the effectiveness of the control plan.

(5) The owner or operator of a CCR unit shall prepare an initial CCR fugitive dust control plan for the facility no later than October 19, 2015, or by initial receipt of CCR in any CCR unit at the facility if the owner or operator becomes subject to Sections R315-319-50 through 107 after October 19, 2015. The owner or operator has completed the initial CCR fugitive dust control plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(1).

(6) Amendment of the plan. The owner or operator of a CCR unit subject to the requirements of Section R315-319-80 may amend the written CCR fugitive dust control plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(1). The owner or operator shall amend the written plan whenever there is a change in conditions that would substantially affect the written plan in effect, such as the construction and operation of a new CCR unit.

(7) The owner or operator shall obtain a certification from a qualified professional engineer that the initial CCR fugitive dust control plan, or any subsequent amendment of it, meets the requirements of Section R315-319-80.

(c) Annual CCR fugitive dust control report. The owner or operator of a CCR unit shall prepare an annual CCR fugitive dust control report that includes a description of the actions taken by the owner or operator to control CCR fugitive dust, a record of all citizen complaints, and a summary of any corrective measures taken. The initial annual report shall be completed no later than 14 months after placing the initial CCR fugitive dust control plan in the facility's operating record. The deadline for completing a subsequent report is one year after the date of completing the previous report. For purposes of Subsection R315-319-80(c), the owner or operator has completed the annual CCR fugitive dust control report when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(2).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-81. Operating Criteria Run-On and Run-Off

Controls for CCR Landfills.

(a) The owner or operator of an existing or new CCR landfill or any lateral expansion of a CCR landfill shall design, construct, operate, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the CCR unit during the peak discharge from a 24-hour, 25-year storm; and

(2) A run-off control system from the active portion of the CCR unit to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the CCR unit shall be handled in accordance with the surface water requirements under Subsection R315-303-2(3).

(c) Run-on and run-off control system plan

(1) Content of the plan. The owner or operator shall prepare initial and periodic run-on and run-off control system plans for the CCR unit according to the timeframes specified in Subsections R315-319-81(c)(3) and (4). These plans shall document how the run-on and run-off control systems have been designed and constructed to meet the applicable requirements of Section R315-319-81. Each plan shall be supported by appropriate engineering calculations. The owner or operator has completed the initial run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(3).

(2) Amendment of the plan. The owner or operator may amend the written run-on and run-off control system plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(3). The owner or operator shall amend the written run-on and run-off control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Timeframes for preparing the initial plan

(i) Existing CCR landfills. The owner or operator of the CCR unit shall prepare the initial run-on and run-off control system plan no later than October 17, 2016.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator shall prepare the initial run-on and run-off control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) Frequency for revising the plan. The owner or operator of the CCR unit shall prepare periodic run-on and run-off control system plans required by Subsection R315-319-81(c)(1) every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first subsequent plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of Subsection R315-319-81(c)(4), the owner or operator has completed a periodic run-on and run-off control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(3).

(5) The owner or operator shall obtain a certification from a qualified professional engineer stating that the initial and periodic run-on and run-off control system plans meet the requirements of Section R315-319-81.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-82. Operating Criteria - Hydrologic and Hydraulic Capacity Requirements for CCR Surface Impoundments.

(a) The owner or operator of an existing or new CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall design, construct, operate, and maintain an inflow design flood control system as specified in Subsections R315-319-82(a)(1) and (2).

(1) The inflow design flood control system shall adequately manage flow into the CCR unit during and following the peak discharge of the inflow design flood specified in Subsection R315-319-82(a)(3).

(2) The inflow design flood control system shall adequately manage flow from the CCR unit to collect and control the peak discharge resulting from the inflow design flood specified in Subsection R315-319-82(a)(3).

(3) The inflow design flood is:

(i) For a high hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the probable maximum flood;

(ii) For a significant hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the 1,000-year flood;

(iii) For a low hazard potential CCR surface impoundment, as determined under Subsection R315-319-73(a)(2) or Subsection R315-319-74(a)(2), the 100-year flood; or

(iv) For an incised CCR surface impoundment, the 25-year flood.

(b) Discharge from the CCR unit shall be handled in accordance with the surface water requirements under Subsection R315-303-2(3).

(c) Inflow design flood control system plan

(1) Content of the plan. The owner or operator shall prepare initial and periodic inflow design flood control system plans for the CCR unit according to the timeframes specified in Subsections R315-319-82 (c)(3) and (4). These plans shall document how the inflow design flood control system has been designed and constructed to meet the requirements of Section R315-319-82. Each plan shall be supported by appropriate engineering calculations. The owner or operator of the CCR unit has completed the inflow design flood control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(4).

(2) Amendment of the plan. The owner or operator of the CCR unit may amend the written inflow design flood control system plan at any time provided the revised plan is placed in the facility's operating record as required by Subsection R315-319-105(g)(4). The owner or operator shall amend the written inflow design flood control system plan whenever there is a change in conditions that would substantially affect the written plan in effect.

(3) Timeframes for preparing the initial plan

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall prepare the initial inflow design flood control system plan no later than October 17, 2016.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator shall prepare the initial inflow design flood control system plan no later than the date of initial receipt of CCR in the CCR unit.

(4) Frequency for revising the plan. The owner or operator shall prepare periodic inflow design flood control system plans required by Subsection R315-319-82(c)(1) every five years. The date of completing the initial plan is the basis for establishing the deadline to complete the first

periodic plan. The owner or operator may complete any required plan prior to the required deadline provided the owner or operator places the completed plan into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing a subsequent plan is based on the date of completing the previous plan. For purposes of Subsection R315-319-82(c)(4), the owner or operator has completed an inflow design flood control system plan when the plan has been placed in the facility's operating record as required by Subsection R315-319-105(g)(4).

(5) The owner or operator shall obtain a certification from a qualified professional engineer stating that the initial and periodic inflow design flood control system plans meet the requirements of Section R315-319-82.

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-83. Operating Criteria - Inspection Requirements for CCR Surface Impoundments.

(a) Inspections by a qualified person.

(1) All CCR surface impoundments and any lateral expansion of a CCR surface impoundment shall be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit;

(ii) At intervals not exceeding seven days, inspect the discharge of all outlets of hydraulic structures which pass underneath the base of the surface impoundment or through the dike of the CCR unit for abnormal discoloration, flow or discharge of debris or sediment; and

(iii) At intervals not exceeding 30 days, monitor all CCR unit instrumentation.

(iv) The results of the inspection by a qualified person shall be recorded in the facility's operating record as required by Subsection R315-319-105(g)(5).

(2) Timeframes for inspections by a qualified person

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-83(a) no later than October 19, 2015.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-83(a) upon initial receipt of CCR by the CCR unit.

(b) Annual inspections by a qualified professional engineer.

(1) If the existing or new CCR surface impoundment or any lateral expansion of the CCR surface impoundment is subject to the periodic structural stability assessment requirements under Subsection R315-319-73(d) or Subsection R315-319-74(d), the CCR unit shall additionally be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection shall, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record, e.g., CCR unit design and construction information required by Subsections R315-319-73(c)(1) and 74(c)(1), previous periodic structural stability assessments required under Subsections R315-319-73(d) and 74(d), the results of inspections by a qualified person, and results of previous annual inspections;

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit and appurtenant structures; and

(iii) A visual inspection of any hydraulic structures underlying the base of the CCR unit or passing through the dike of the CCR unit for structural integrity and continued safe and reliable operation.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the impounding structure since the previous annual inspection;

(ii) The location and type of existing instrumentation and the maximum recorded readings of each instrument since the previous annual inspection;

(iii) The approximate minimum, maximum, and present depth and elevation of the impounded water and CCR since the previous annual inspection;

(iv) The storage capacity of the impounding structure at the time of the inspection;

(v) The approximate volume of the impounded water and CCR at the time of the inspection;

(vi) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit and appurtenant structures; and

(vii) Any other change(s) which may have affected the stability or operation of the impounding structure since the previous annual inspection.

(3) Timeframes for conducting the initial inspection

(i) Existing CCR surface impoundments. The owner or operator of the CCR unit shall complete the initial inspection required by Subsections R315-319-8 (b)(1) and (2) no later than January 18, 2016.

(ii) New CCR surface impoundments and any lateral expansion of a CCR surface impoundment. The owner or operator of the CCR unit shall complete the initial annual inspection required by Subsections R315-319-83(b)(1) and (2) is completed no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections.

(i) Except as provided for in Subsection R315-319-83(b)(4)(ii), the owner or operator of the CCR unit shall conduct the inspection required by Subsections R315-319-83(b)(1) and (2) on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of Section R315-319-83, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by Subsection R315-319-105(g)(6).

(ii) In any calendar year in which both the periodic inspection by a qualified professional engineer and the quinquennial, occurring every five years, structural stability assessment by a qualified professional engineer required by Subsections R315-319-73(d) and 74(d) are required to be completed, the annual inspection is not required, provided the structural stability assessment is completed during the calendar year. If the annual inspection is not conducted in a year as provided by Subsection R315-319-83(b)(4)(ii), the

deadline for completing the next annual inspection is one year from the date of completing the quinquennial structural stability assessment.

(5) If a deficiency or release is identified during an inspection, the owner or operator shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-84. Operating Criteria - Inspection Requirements for CCR Landfills.

(a) Inspections by a qualified person.

(1) All CCR landfills and any lateral expansion of a CCR landfill shall be examined by a qualified person as follows:

(i) At intervals not exceeding seven days, inspect for any appearances of actual or potential structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit; and

(ii) The results of the inspection by a qualified person shall be recorded in the facility's operating record as required by Subsection R315-319-105(g)(8).

(2) Timeframes for inspections by a qualified person

(i) Existing CCR landfills. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-84(a) no later than October 19, 2015.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall initiate the inspections required under Subsection R315-319-84(a) upon initial receipt of CCR by the CCR unit.

(b) Annual inspections by a qualified professional engineer.

(1) Existing and new CCR landfills and any lateral expansion of a CCR landfill shall be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards. The inspection shall, at a minimum, include:

(i) A review of available information regarding the status and condition of the CCR unit, including, but not limited to, files available in the operating record, e.g., the results of inspections by a qualified person, and results of previous annual inspections; and

(ii) A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

(2) Inspection report. The qualified professional engineer shall prepare a report following each inspection that addresses the following:

(i) Any changes in geometry of the structure since the previous annual inspection;

(ii) The approximate volume of CCR contained in the unit at the time of the inspection;

(iii) Any appearances of an actual or potential structural weakness of the CCR unit, in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit; and

(iv) Any other change(s) which may have affected the stability or operation of the CCR unit since the previous annual inspection.

(3) Timeframes for conducting the initial inspection

(i) Existing CCR landfills. The owner or operator of the CCR unit shall complete the initial inspection required by Subsections R315-319-84(b)(1) and (2) no later than January 18, 2016.

(ii) New CCR landfills and any lateral expansion of a CCR landfill. The owner or operator of the CCR unit shall complete the initial annual inspection required by Subsections R315-319-84(b)(1) and (2) no later than 14 months following the date of initial receipt of CCR in the CCR unit.

(4) Frequency of inspections. The owner or operator of the CCR unit shall conduct the inspection required by Subsections R315-319-84(b)(1) and (2) on an annual basis. The date of completing the initial inspection report is the basis for establishing the deadline to complete the first subsequent inspection. Any required inspection may be conducted prior to the required deadline provided the owner or operator places the completed inspection report into the facility's operating record within a reasonable amount of time. In all cases, the deadline for completing subsequent inspection reports is based on the date of completing the previous inspection report. For purposes of Section R315-319-84, the owner or operator has completed an inspection when the inspection report has been placed in the facility's operating record as required by Subsection R315-319-105(g)(9).

(5) If a deficiency or release is identified during an inspection, the owner or operator shall remedy the deficiency or release as soon as feasible and prepare documentation detailing the corrective measures taken.

(c) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(g), the notification requirements specified in Subsection R315-319-106(g), and the internet requirements specified in Subsection R315-319-107(g).

R315-319-90. Groundwater Monitoring and Corrective Action - Applicability.

(a) Except as provided for in Subsection R315-319-100 for inactive CCR surface impoundments, all CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under Subsections R315-319-90 through 98.

(b) Initial timeframes

(1) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2017, the owner or operator of the CCR unit shall be in compliance with the following groundwater monitoring requirements:

(i) Install the groundwater monitoring system as required by Subsection R315-319-91;

(ii) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by Subsection R315-319-93;

(iii) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by Subsection R315-319-94(b); and

(iv) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in appendix III of Rule R315-319 as required by Subsection R315-319-94.

(2) New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units. Prior to initial receipt of CCR by the CCR unit, the owner or operator shall be in compliance with the groundwater monitoring requirements specified in Subsections R315-319-90(b)(1)(i) and (ii). In addition, the owner or operator of the CCR unit shall initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by Subsection R315-319-94(b).

(c) Once a groundwater monitoring system and

groundwater monitoring program has been established at the CCR unit as required by Sections R315-319-50 through 107, the owner or operator shall conduct groundwater monitoring and, if necessary, corrective action throughout the active life and post-closure care period of the CCR unit.

(d) In the event of a release from a CCR unit, the owner or operator shall immediately take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment. The owner or operator of the CCR unit shall comply with all applicable requirements in Subsections R315-319-96, 97, and 98.

(e) Annual groundwater monitoring and corrective action report. For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator shall prepare an annual groundwater monitoring and corrective action report and forward the report to the Director by March 1 of each year. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator shall prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by Sections R315-319-50 through 107, and annually thereafter. For the preceding calendar year, the annual report shall document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of Sections R315-319-90, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by Subsection R315-319-105(h)(1). At a minimum, the annual groundwater monitoring and corrective action report shall contain the following information, to the extent available:

(1) A map, aerial image, or diagram showing the CCR unit and all background, or upgradient, and downgradient monitoring wells, to include the well identification numbers, that are part of the groundwater monitoring program for the CCR unit;

(2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;

(3) In addition to all the monitoring data obtained under Sections R315-319-90 through 98, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;

(4) A narrative discussion of any transition between monitoring programs, e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituent(s) detected at a statistically significant increase over background levels; and

(5) Other information required to be included in the annual report as specified in Section R315-319-90 through 98.

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-91. Groundwater Monitoring and Corrective Action - Groundwater Monitoring Systems.

(a) Performance standard. The owner or operator of a CCR unit shall install a groundwater monitoring system consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:

(1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:

(i) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system shall be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways shall be monitored.

(b) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that shall include thorough characterization of:

(1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(c) The groundwater monitoring system shall include the minimum number of monitoring wells necessary to meet the performance standards specified in Subsection R315-319-91(a), based on the site-specific information specified in Subsection R315-319-91(b). The groundwater monitoring system shall contain:

(1) A minimum of one upgradient and three downgradient monitoring wells; and

(2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.

(d) The owner or operator of multiple CCR units may install a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each CCR unit.

(1) The multiunit groundwater monitoring system shall be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual groundwater monitoring system specified in Subsections R315-319-91(a) through (c) for each CCR unit based on the following factors:

(i) Number, spacing, and orientation of each CCR unit;

(ii) Hydrogeologic setting;

(iii) Site history; and

(iv) Engineering design of the CCR unit.

(2) If the owner or operator elects to install a multiunit groundwater monitoring system, and if the multiunit system includes at least one existing unlined CCR surface impoundment as determined by Subsection R315-319-71(a), and if at any time after October 19, 2015 the owner or operator determines in any sampling event that the concentrations of one or more constituents listed in appendix

IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) for the multiunit system, then all unlined CCR surface impoundments comprising the multiunit groundwater monitoring system are subject to the closure requirements under Subsection R315-319-101(a) to retrofit or close.

(e) Monitoring wells shall be cased in a manner that maintains the integrity of the monitoring well borehole. 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 borehole and well casing, above the sampling depth shall be sealed to prevent contamination of samples and the groundwater.

(1) The owner or operator of the CCR unit shall document and include in the operating record the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices. The qualified professional engineer shall be given access to this documentation when completing the groundwater monitoring system certification required under Subsection R315-319-91(f).

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

(f) The owner or operator shall obtain a certification from a qualified professional engineer stating that the groundwater monitoring system has been designed and constructed to meet the requirements of Section R315-319-91. If the groundwater monitoring system includes the minimum number of monitoring wells specified in Subsection R315-319-91(c)(1), the certification shall document the basis supporting this determination.

(g) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-93. Groundwater Monitoring and Corrective Action - Groundwater Sampling and Analysis Requirements.

(a) The groundwater monitoring program shall include consistent sampling and analysis procedures designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells required by Subsection R315-319-91. The owner or operator of the CCR unit shall develop and receive approval from the Director for a sampling and analysis program that includes procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. For purposes of Subsections R315-319-90 through 98, the term constituent refers to both hazardous constituents and other monitoring parameters listed in either appendix III or IV of Rule R315-319.

(c) Groundwater elevations shall be measured in each well immediately prior to purging, each time groundwater is sampled. The owner or operator of the CCR unit shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same CCR management area shall be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

(d) The owner or operator of the CCR unit shall establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the constituents required in the particular groundwater monitoring program that applies to the CCR unit as determined under Subsection R315-319-94(a) or Subsection R315-319-95(a). Background groundwater quality may be established at wells that are not located hydraulically upgradient from the CCR unit if it meets the requirements of Subsection R315-319-91(a)(1).

(e) The number of samples collected when conducting detection monitoring and assessment monitoring, for both downgradient and background wells, shall be consistent with the statistical procedures chosen under Subsection R315-319-93(f) and the performance standards under Subsection R315-319-93(g). The sampling procedures shall be those specified under Subsections R315-319-94(b) through (d) for detection monitoring, Subsection R315-319-95(b) through (d) for assessment monitoring, and Subsection R315-319-96(b) for corrective action.

(f) The owner or operator of the CCR unit shall select one of the statistical methods specified in Subsections R315-319-93(f)(1) through (5) to be used in evaluating groundwater monitoring data for each specified constituent. The statistical test chosen shall be conducted separately for each constituent in each monitoring well.

(1) A parametric analysis of variance followed by multiple comparison procedures to identify statistically 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 based on ranks followed by multiple comparison procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each 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 that meets the performance standards of Subsection R315-319-93(g) and has been approved by the Director.

(6) The owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area. The certification shall include a narrative description of the statistical method selected to evaluate the groundwater monitoring data.

(g) Any statistical method chosen under Subsection R315-319-93(f) shall comply with the following performance standards, as appropriate, based on the statistical test method used:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of constituents. Normal distributions of data values shall use parametric methods. Non-normal distributions shall use non-parametric methods. If the distribution of the constituents is

shown by the owner or operator of the CCR unit to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free, non-parametric, theory test shall 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 comparison procedure is used, the Type I experiment wise 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, prediction 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 such that this approach is at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. The parameter values shall 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.

(4) If a tolerance interval or a predictional 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 such that this approach is at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. These parameters shall 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 shall at least as effective as any other approach in Section R315-319-93 for evaluating groundwater data. Any practical quantitation limit 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.

(h) The owner or operator of the CCR unit shall determine whether or not there is a statistically significant increase over background values for each constituent required in the particular groundwater monitoring program that applies to the CCR unit, as determined under Subsection R315-319-94(a) or Subsection R315-319-95(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator shall compare the groundwater quality of each constituent at each monitoring well designated pursuant to Subsection R315-319-91(a)(2) or (d)(1) to the background value of that constituent, according to the statistical procedures and performance standards specified under Subsections R315-319-93(f) and (g).

(2) Within 90 days after completing sampling and analysis, the owner or operator shall determine whether there has been a statistically significant increase over background for any constituent at each monitoring well.

(i) The owner or operator shall measure "total recoverable metals" concentrations in measuring groundwater quality. Measurement of total recoverable metals captures both the particulate fraction and dissolved fraction of metals in natural waters. Groundwater samples shall not be field-filtered prior to analysis.

(j) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-94 Groundwater Monitoring and Corrective Action - Detection Monitoring Program.

(a) The owner or operator of a CCR unit shall conduct detection monitoring at all groundwater monitoring wells consistent with Section R315-319-94. At a minimum, a detection monitoring program shall include groundwater monitoring for all constituents listed in appendix III to Rule R315-319.

(b) Except as provided in Subsection R315-319-94(d), the monitoring frequency for the constituents listed in appendix III to Rule R315-319 shall be at least semiannual during the active life of the CCR unit and the post-closure period. For existing CCR landfills and existing CCR surface impoundments, a minimum of eight independent samples from each background and downgradient well shall be collected and analyzed for the constituents listed in appendix III and IV to Rule R315-319 no later than October 17, 2017. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, a minimum of eight independent samples for each background well shall be collected and analyzed for the constituents listed in appendices III and IV to Rule R315-319 during the first six months of sampling.

(c) The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each background and downgradient well.

(d) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix III to Rule R315-319 during the active life and the post-closure care period based on the availability of groundwater. This demonstration shall be submitted and approved by the Director. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis. The demonstration shall be supported by, at a minimum, the information specified in Subsections R315-319-94(d)(1) and (2).

(1) Information documenting that the need for less frequent sampling. The alternative frequency shall be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay establishment of an assessment monitoring program.

(3) The owner or operator shall obtain a certification from a qualified professional engineer stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of Section R315-319-94. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified

professional engineer in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(e) If the owner or operator of the CCR unit determines, pursuant to Subsection R315-319-93(h) that there is a statistically significant increase over background levels for one or more of the constituents listed in appendix III to Rule R315-319 at any monitoring well at the waste boundary specified under Subsection R315-319-91(a)(2), the owner or operator shall:

(1) Except as provided for in Subsection R315-319-94(e)(2), within 90 days of detecting a statistically significant increase over background levels for any constituent, establish an assessment monitoring program meeting the requirements of Subsection R315-319-95.

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The owner or operator shall complete the written demonstration within 90 days of detecting a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer verifying the accuracy of the information in the report. If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under Section R315-319-94. If a successful demonstration is not completed within the 90-day period, the owner or operator of the CCR unit shall initiate an assessment monitoring program as required under Subsection R315-319-95. The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(3) The owner or operator of a CCR unit shall prepare a notification stating that an assessment monitoring program has been established. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(5).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-95. Groundwater Monitoring and Corrective Action - Assessment Monitoring Program.

(a) Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in appendix III to Rule R315-319.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit shall sample and analyze the groundwater for all constituents listed in appendix IV to Rule R315-319. The number of samples collected and analyzed for each well during each sampling event shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each well.

(c) The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in appendix IV to Rule R315-319 during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency shall be evaluated on a site-specific basis. The demonstration shall be supported by, at a minimum, the information specified in Subsections R315-319-95(c)(1) and (2).

(1) Information documenting that the need for less frequent sampling. The alternative frequency shall be based on consideration of the following factors:

(i) Lithology of the aquifer and unsaturated zone;

(ii) Hydraulic conductivity of the aquifer and unsaturated zone; and

(iii) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator shall obtain a certification from a qualified professional engineer stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of Section R315-319-95. The owner or operator shall include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(d) After obtaining the results from the initial and subsequent sampling events required in Subsection R315-319-95(b), the owner or operator shall:

(1) Within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of Section R315-319-91, conduct analyses for all parameters in appendix III to Rule R315-319 and for those constituents in appendix IV to Rule R315-319 that are detected in response to Subsection R315-319-95(b), and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events shall be consistent with Subsection R315-319-93(e), and shall account for any unique characteristics of the site, but shall be at least one sample from each background and downgradient well;

(2) Establish groundwater protection standards for all constituents detected pursuant to Subsection R315-319-95(b) or (d). The groundwater protection standards shall be established in accordance with Subsection R315-319-95(h); and

(3) Include the recorded concentrations required by Subsection R315-319-95(d)(1), identify the background concentrations established under Subsection R315-319-94(b), and identify the groundwater protection standards established under Subsection R315-319-95(d)(2) in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e).

(e) If the concentrations of all constituents listed in appendices III and IV of Rule R315-319 are shown to be at or below background values, using the statistical procedures in Subsection R315-319-93(g), for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit. The owner or operator shall prepare a notification stating that detection monitoring is resuming for the CCR unit and submit the notification to the Director for approval. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(7).

(f) If the concentrations of any constituent in appendices

III and IV to Rule R315-319 are above background values, but all concentrations are below the groundwater protection standard established under Subsection R315-319-95(h), using the statistical procedures in Subsection R315-319-93(g), the owner or operator shall continue assessment monitoring in accordance with Section R315-319-95.

(g) If one or more constituents in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) in any sampling event, the owner or operator shall prepare a notification identifying the constituents in appendix IV to Rule R315-319 that have exceeded the groundwater protection standard. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by Subsection R315-319-105(h)(8). The owner or operator of the CCR unit also shall:

(1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization shall be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up all releases from the CCR unit pursuant to Subsection R315-319-96. Characterization of the release includes the following minimum measures:

(i) Install additional monitoring wells necessary to define the contaminant plume(s);

(ii) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in appendix IV of Rule R315-319 and the levels at which they are present in the material released;

(iii) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with Subsection R315-319-95(d)(1); and

(iv) Sample all wells in accordance with Subsection R315-319-95(d)(1) to characterize the nature and extent of the release.

(2) 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 if indicated by sampling of wells in accordance with Subsection R315-319-95(g)(1). The owner or operator has completed the notifications when they are placed in the facility's operating record as required by Subsection R315-319-105(h)(8).

(3) Within 90 days of finding that any of the constituents listed in appendix IV to Rule R315-319 have been detected at a statistically significant level exceeding the groundwater protection standards the owner or operator shall either:

(i) Initiate an assessment of corrective measures as approved by the Director and as required by Subsection R315-319-96; or

(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. Any such demonstration shall be submitted to and has received approval from the Director and supported by a report that includes the factual or evidentiary basis for any conclusions and shall be certified to be accurate by a qualified professional engineer. If a successful demonstration is made, the owner or operator shall continue monitoring in accordance with the assessment monitoring program pursuant to Section R315-319-95, and may return to detection monitoring if the constituents in appendices III and IV to Rule R315-319 are at or below background as specified in Subsection R315-319-95(e). The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(4) If a successful demonstration has not been made at the end of the 90 day period provided by Subsection R315-319-95(g)(3)(ii), the owner or operator of the CCR unit shall initiate the assessment of corrective measures requirements under Subsection R315-319-96.

(5) If an assessment of corrective measures is required under Subsection R315-319-96 by either Subsection R315-319-95(g)(3)(i) or (g)(4), and if the CCR unit is an existing unlined CCR surface impoundment as determined by Subsection R315-319-71(a), then the CCR unit is subject to the closure requirements under Subsection R315-319-101(a) to retrofit or close. In addition, the owner or operator shall prepare a notification stating that an assessment of corrective measures has been initiated.

(h) The owner or operator of the CCR unit shall establish a groundwater protection standard for each constituent in appendix IV to Rule R315-319 detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a ground water protection standard has been estaliblished in rule R315-308, the ground water protection standard in Rule R315-308;

(2) For constituents for which a ground water protection standard has not been established in Rule R315-308, the background concentration for the constituent established from wells in accordance with Section R315-319-91; or

(3) For constituents for which the background level is higher than the ground water protection standard identified under Subsection R315-319-95(h)(1), the background concentration.

(i) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-96. Groundwater Monitoring and Corrective Action Assessment of Corrective Measures.

(a) Within 90 days of finding that any constituent listed in appendix IV to Rule R315-319 has been detected at a statistically significant level exceeding the groundwater protection standard defined under Subsection R315-319-95(h), or immediately upon detection of a release from a CCR unit, the owner or operator shall initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures shall be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator shall obtain a certification from a qualified professional engineer attesting that the demonstration is accurate. The 90-day deadline to complete the assessment of corrective measures may be extended for no longer than 60 days. The owner or operator shall also include the demonstration in the annual groundwater monitoring and corrective action report required by Subsection R315-319-90(e), in addition to the certification by a qualified professional engineer.

(b) The owner or operator of the CCR unit shall continue to monitor groundwater in accordance with the assessment monitoring program as specified in Subsection R315-319-95.

(c) The assessment under Subsection R315-319-96(a) shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under Subsection

R315-319-97 addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The institutional requirements, such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator shall place the completed assessment of corrective measures in the facility's operating record. The assessment has been completed when it is placed in the facility's operating record as required by Subsection R315-319-105(h)(10).

(e) The owner or operator shall discuss the results of the corrective measures assessment at least 30 days prior to the selection of remedy, in a public meeting with interested and affected parties.

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-97. Groundwater Monitoring and Corrective Action Selection of Remedy.

(a) Based on the results of the corrective measures assessment conducted under Subsection R315-319-96, the owner or operator shall, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in Subsection R315-319-97(b). This requirement applies to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator shall prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator shall prepare a final report describing the selected remedy and how it meets the standards specified in Subsection R315-319-97(b). The remedy and report shall be approved by the Director. The owner or operator shall obtain a certification from a qualified professional engineer that the remedy selected meets the requirements of Section R315-319-97. The report has been completed when it is placed in the operating record as required by Subsection R315-319-105(h)(12).

(b) Remedies shall:

(1) Be protective of human health and the environment;

(2) Attain the groundwater protection standard as specified pursuant to Subsection R315-319-95(h);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix IV to Rule R315-319 into the environment;

(4) Remove from the environment as much of the contaminated material that was released from the CCR unit as is feasible, taking into account factors such as avoiding inappropriate disturbance of sensitive ecosystems;

(5) Comply with standards for management of wastes as specified in Subsection R315-319-98(d).

(c) In selecting a remedy that meets the standards of Subsection R315-319-97(b), the owner or operator of the CCR unit shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to CCR remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal of contaminant;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases; and

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for implementing and completing remedial activities. Such a schedule shall require the completion of remedial activities within a reasonable period of time taking into consideration the factors set forth in Subsections R315-319-97 (d)(1) through (6). The owner or operator of the CCR unit shall consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination, as determined by the characterization required under Subsection R315-319-95(g);

(2) Reasonable probabilities of remedial technologies in achieving compliance with the groundwater protection standards established under Subsection R315-319-95(h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for CCR managed during implementation of the remedy;

(4) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(5) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Groundwater quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to CCR constituents;

(v) The hydrogeologic characteristic of the facility and surrounding land; and

(vi) The availability of alternative water supplies; and

(6) Other relevant factors as required by the Director.

(e) The owner or operator of the CCR unit shall comply

with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the Internet requirements specified in Subsection R315-319-107(h).

R315-319-98. Groundwater Monitoring and Corrective Action Implementation of the Corrective Action Program.

(a) Within 90 days of selecting a remedy under Subsection R315-319-97, the owner or operator shall initiate remedial activities. Based on the schedule established under Subsection R315-319-97(d) for implementation and completion of remedial activities the owner or operator shall:

(1) Establish and implement a corrective action groundwater monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under Subsection R315-319-95;

(ii) Documents the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with the groundwater protection standard pursuant to Subsection R315-319-98(c).

(2) Implement the corrective action remedy selected under Subsection R315-319-97; and

(3) Take any interim measures necessary to reduce the contaminants leaching from the CCR unit, and/or potential exposures to human or ecological receptors. Interim measures shall, to the greatest extent feasible, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Subsection R315-319-97. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to any of the constituents listed in appendix IV of Rule R315-319;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause any of the constituents listed in appendix IV to this part to migrate or be released;

(vi) Potential for exposure to any of the constituents listed in appendix IV to Rule R315-319 as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) If an owner or operator of the CCR unit, determines, at any time, that compliance with the requirements of Subsection R315-319-97(b) is not being achieved through the remedy selected, the owner or operator shall, with approval of the Director, implement other methods or techniques that could feasibly achieve compliance with the requirements.

(c) Remedies selected pursuant to Subsection R315-319-97 shall be considered complete when:

(1) The owner or operator of the CCR unit demonstrates compliance with the groundwater protection standards established under Subsection R315-319-95(h) has been achieved at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under Subsection R315-319-91 and has received Director approval.

(2) Compliance with the groundwater protection standards established under Subsection R315-319-95(h) has been achieved by demonstrating that concentrations of constituents listed in appendix IV to Rule R315-319 have not exceeded the groundwater protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in Subsection R315-319-93(f) and (g).

(3) All actions required to complete the remedy have been satisfied.

(d) All CCR that are managed pursuant to a remedy required under Section R315-319-97, or an interim measure required under Subsection R315-319-98(a)(3), shall be managed in a manner that complies with all applicable Utah requirements.

(e) Upon completion of the remedy, the owner or operator shall prepare a notification stating that the remedy has been completed. The notification shall be submitted to and be approved by the Director. The owner or operator shall obtain a certification from a qualified professional engineer attesting that the remedy has been completed in compliance with the requirements of Subsection R315-319-98(c). The report has been completed when it is placed in the operating record as required by Subsection R315-319-105(h)(13).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(h), the notification requirements specified in Subsection R315-319-106(h), and the internet requirements specified in Subsection R315-319-107(h).

R315-319-100. Closure and Post-Closure Care Inactive CCR Surface Impoundments.

(a) Inactive CCR surface impoundments are subject to all of the requirements of Sections R315-319-50 through 107 applicable to existing CCR surface impoundments.

R315-319-101. Closure and Post-Closure Care - Closure or Retrofit of CCR Units.

(a) The owner or operator of an existing unlined CCR surface impoundment, as determined under Subsection R315-319-71(a), is subject to the requirements of Subsection R315-319-101(a)(1).

(1) Except as provided by Subsection R315-319-101(a)(3), if at any time after October 19, 2015 an owner or operator of an existing unlined CCR surface impoundment determines in any sampling event that the concentrations of one or more constituents listed in appendix IV to Rule R315-319 are detected at statistically significant levels above the groundwater protection standard established under Subsection R315-319-95(h) for such CCR unit, within six months of making such determination, the owner or operator of the existing unlined CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with Subsection R315-319-101(a)(1) shall include a statement in the notification required under Subsection R315-319-102(g) or (k)(5) that the CCR surface impoundment is closing or retrofitting under the requirements of Subsection R315-319-101(a)(1).

(3) The timeframe specified in Subsection R315-319-101(a)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Subsection R315-319-103.

(4) At any time after the initiation of closure under Subsection R315-319-101(a)(1), the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of Subsection R315-319-102(k).

(b) The owner or operator of an existing CCR surface impoundment is subject to the requirements of Subsection

R315-319-101(b)(1).

(1) Except as provided by Subsection R315-319-101(b)(4), within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in Subsections R315-319-60(a), 61(a), 62(a), 63(a), and 64(a), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(2) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by Subsection R315-319-73(e) by the deadlines specified in Subsections R315-319-73(f)(1) through (3) or failing to document that the calculated factors of safety for the existing CCR surface impoundment achieve the minimum safety factors specified in Subsections R315-319-73(e)(1)(i) through (iv), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Subsection R315-319-102.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with Subsection R315-319-101(b)(1) or (2) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR surface impoundment is closing under the requirements of Subsection R315-319-101(b)(1) or (2).

(4) The timeframe specified in Subsection R315-319-101(b)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Subsection R315-319-103.

(c) The owner or operator of a new CCR surface impoundment is subject to the requirements of Subsection R315-319-101(c)(1).

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by Subsection R315-319-74(e) by the deadlines specified in Subsections R315-319-74(f)(1) through (3) or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in Subsections R315-319-74(e)(1)(i) through (v), the owner or operator of the CCR surface impoundment shall cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of Section R315-319-102.

(2) An owner or operator of an new CCR surface impoundment that closes in accordance with Subsection R315-319-101(c)(1) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR surface impoundment is closing under the requirements of Subsection R315-319-101(c)(1).

(d) The owner or operator of an existing CCR landfill is subject to the requirements of Subsection R315-319-101(d)(1).

(1) Except as provided by Subsection R315-319-101(d)(3), within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in Subsection R315-319-64(a), the owner or operator of the CCR unit shall cease placing CCR and non-CCR waste streams into such CCR landfill and close the CCR unit in accordance with the requirements of Section R315-319-102.

(2) An owner or operator of an existing CCR landfill that closes in accordance with Subsection R315-319-101(d)(1) shall include a statement in the notification required under Subsection R315-319-102(g) that the CCR landfill is closing under the requirements of Subsection R315-319-101(d)(1).

(3) The timeframe specified in Subsection R315-319-101(d)(1) does not apply if the owner or operator complies with the alternative closure procedures specified in Section R315-319-103.

R315-319-102. Closure and Post-Closure Care - Criteria for Conducting the Closure or Retrofit of CCR Units.

(a) Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit shall be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in Subsections R315-319-102(b) through (j). Retrofit of a CCR surface impoundment shall be completed in accordance with the requirements in Subsection R315-319-102(k).

(b) Written closure plan

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life of the CCR unit consistent with recognized and generally accepted good engineering practices. The written closure plan shall include, at a minimum, the information specified in Subsections R315-319-102(b)(1)(i) through (vi).

(i) A narrative description of how the CCR unit will be closed in accordance with Section R315-319-102.

(ii) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with Subsection R315-319-102(c).

(iii) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system, designed in accordance with Subsection R315-319-102(d), and the methods and procedures to be used to install the final cover. The closure plan shall also discuss how the final cover system will achieve the performance standards specified in Subsection R315-319-102(d).

(iv) An estimate of the maximum inventory of CCR ever on-site over the active life of the CCR unit.

(v) An estimate of the largest area of the CCR unit ever requiring a final cover as required by Subsection R315-319-102(d) at any time during the CCR unit's active life.

(vi) A schedule for completing all activities necessary to satisfy the closure criteria in Section R315-319-102, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated timeframes to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the timeframes specified in Subsection R315-319-102(f)(1), the written closure plan shall include the site-specific information, factors and considerations that would support any time extension sought under Subsection R315-319-102(f)(2).

(2) Timeframes for preparing the initial written closure plan

(i) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit shall prepare an initial written closure plan consistent with the requirements specified in Subsection R315-319-102(b)(1).

(ii) New CCR landfills and new CCR surface impoundments, and any lateral expansion of a CCR unit. No

later than the date of the initial receipt of CCR in the CCR unit, the owner or operator shall prepare an initial written closure plan consistent with the requirements specified in Subsection R315-319-102(b)(1).

(iii) The owner or operator has completed the written closure plan when the plan, including the certification required by Subsection R315-319-102(b)(4), has been placed in the facility's operating record as required by Subsection R315-319-105(i)(4).

(3) Amendment of a written closure plan.

(i) The owner or operator may amend the initial or any subsequent written closure plan developed pursuant to Subsection R315-319-102 (b)(1) at any time.

(ii) The owner or operator shall amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or

(B) Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan.

(iii) The owner or operator shall amend the closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator shall amend the current closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written closure plan meets the requirements of Section R315-319-102.

(c) Closure by removal of CCR. An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to Subsection R315-319-95(h) for constituents listed in appendix IV to Rule R315-319.

(d) Closure performance standard when leaving CCR in place

(1) The owner or operator of a CCR unit shall ensure that, at a minimum, the CCR unit is closed in a manner that will:

(i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;

(ii) Preclude the probability of future impoundment of water, sediment, or slurry;

(iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period;

(iv) Minimize the need for further maintenance of the CCR unit; and

(v) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

(2) Drainage and stabilization of CCR surface impoundments. The owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment shall meet the requirements of Subsections R315-319-102(d)(2)(i) and (ii) prior to installing the final cover system required under Subsection R315-319-102(d)(3).

(i) Free liquids shall be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.

(ii) Remaining wastes shall be stabilized sufficient to support the final cover system.

(3) Final cover system. If a CCR unit is closed by leaving CCR in place, the owner or operator shall install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of Subsection R315-319-102(d)(3)(i), or the requirements of the alternative final cover system specified in Subsection R315-319-102(d)(3)(ii).

(i) The final cover system shall be designed and constructed to meet the criteria in Subsections R315-319-102(d)(3)(i)(A) through (D). The design of the final cover system shall be included in the written closure plan required by Subsection R315-319-102(b).

(A) The permeability of the final cover system shall be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1 x 10-5 cm/sec, whichever is less.

(B) The infiltration of liquids through the closed CCR unit shall be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(C) The erosion of the final cover system shall be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(D) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in Subsections R315-319-102(f)(3)(ii)(A) through (D). The design of the final cover system shall be included in the written closure plan required by Subsection R315-319-102(b).

(A) The design of the final cover system shall include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in Subsections R315-319-102(d)(3)(i)(A) and (B).

(B) The design of the final cover system shall include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in Subsection R315-319-102(d)(3)(i)(C).

(C) The disruption of the integrity of the final cover system shall be minimized through a design that accommodates settling and subsidence.

(iii) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the design of the final cover system meets the requirements of Section R315-319-102.

(e) Initiation of closure activities. Except as provided for in Subsection R315-319-102(e)(4) and Section R315-319-103, the owner or operator of a CCR unit shall commence closure of the CCR unit no later than the applicable timeframes specified in either Subsection R315-319-102(e)(1) or (2).

(1) The owner or operator shall commence closure of the CCR unit no later than 30 days after the date on which the CCR unit either:

(i) Receives the known final receipt of waste, either CCR or any non-CCR waste stream; or

(ii) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2)(i) Except as provided by Subsection R315-319-102(e)(2)(ii), the owner or operator shall commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose

of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(ii) Notwithstanding Subsection R315-319-102(e)(2)(i), the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation that the CCR unit will continue to accept wastes or will start removing CCR for the purpose of beneficial use. The documentation shall be supported by, at a minimum, the information specified in Subsections R315-319-102(e)(2)(ii)(A) and (B). The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for the purpose of beneficial use. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by Subsection R315-319-105(i)(5) prior to the end of any two-year period.

(A) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(B) Information demonstrating that that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative shall include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in Subsections R315-319-102(e)(2)(ii)(B)(1) through (4) are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

(1) Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

(2) The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled, e.g., CCR is not being generated, and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

(3) The CCR unit is dedicated to an operating coal-fired boiler, i.e., CCR is being generated; however, no CCR are being placed in the CCR unit because the CCR are being entirely diverted to beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

(4) The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(iii) In order to obtain additional time extension(s) to initiate closure of a CCR unit beyond the two years provided by Subsection R315-319-102(e)(2)(i), the owner or operator of the CCR unit shall include with the demonstration required by Subsection R315-319-102(e)(2)(ii) the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) For purposes of Sections R315-319-50 through 107, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(i) Taken any steps necessary to implement the written closure plan required by Subsection R315-319-102(b);

(ii) Submitted a completed application for any required state or agency permit or permit modification; or

(iii) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(4) The timeframes specified in Subsections R315-319-102(e)(1) and (2) do not apply to any of the following owners or operators:

(i) An owner or operator of an inactive CCR surface impoundment closing the CCR unit as required by Subsection R315-319-100(b);

(ii) An owner or operator of an existing unlined CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(a);

(iii) An owner or operator of an existing CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(b);

(iv) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by Subsection R315-319-101(c); or

(v) An owner or operator of an existing CCR landfill closing the CCR unit as required by Subsection R315-319-101(d).

(f) Completion of closure activities.

(1) Except as provided for in Subsection R315-319-102(f)(2), the owner or operator shall complete closure of the CCR unit:

(i) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(ii) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2)(i) Extensions of closure timeframes. The timeframes for completing closure of a CCR unit specified under Subsection R315-319-102(f)(1) may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by Subsection R315-319-102(b)(1), the demonstration shall include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator shall place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by Subsection R315-319-105(i)(6) prior to the end of any two-year period. Factors that may support such a demonstration include:

(A) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(B) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(C) The geology and terrain surrounding the CCR unit will affect the amount of material needed to close the CCR unit; or

(D) Time required or delays caused by the need to

coordinate with and obtain necessary approvals and permits from a state or other agency.

(ii) Maximum time extensions.

(A) CCR surface impoundments of 40 acres or smaller may extend the time to complete closure by no longer than two years.

(B) CCR surface impoundments larger than 40 acres may extend the timeframe to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.

(C) CCR landfills may extend the timeframe to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator shall substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

(iii) In order to obtain additional time extension(s) to complete closure of a CCR unit beyond the times provided by Subsection R315-319-102(f)(1), the owner or operator of the CCR unit shall include with the demonstration required by Subsection R315-319-102(f)(2)(i) the following statement signed by the owner or operator or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) Upon completion, the owner or operator of the CCR unit shall obtain a certification from a qualified professional engineer verifying that closure has been completed in accordance with the closure plan specified in Subsection R315-319-102(b) and the requirements of Section R315-319-102.

(g) No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator shall prepare a notification of intent to close a CCR unit. The notification shall include the certification by a qualified professional engineer for the design of the final cover system as required by Subsection R315-319-102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(7).

(h) Within 30 days of completion of closure of the CCR unit, the owner or operator shall prepare a notification of closure of a CCR unit. The notification shall include the certification by a qualified professional engineer as required by Subsection R315-319-102(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(8).

(i) Deed notations.

(1) Except as provided by Subsection R315-319-102(i)(4), following closure of a CCR unit, the owner or operator shall record a notation on the deed to the property, or some other instrument that is normally examined during title search.

(2) The notation on the deed shall in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a CCR unit; and

(ii) Its use is restricted under the post-closure care requirements as provided by Subsection R315-319-104(d)(1)(iii).

(3) Within 30 days of recording a notation on the deed to the property, the owner or operator shall prepare a notification stating that the notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(9).

(4) An owner or operator that closes a CCR unit in accordance with Subsection R315-319-102(c) is not subject to the requirements of Subsections R315-319-102(i)(1) through (3).

(j) The owner or operator of the CCR unit shall comply with the closure recordkeeping requirements specified in Subsection R315-319-105(i), the closure notification requirements specified in Subsection R315-319-106(i), and the closure Internet requirements specified in Subsection R315-319-107(i).

(k) Criteria to retrofit an existing CCR surface impoundment.

(1) To retrofit an existing CCR surface impoundment, the owner or operator shall:

(i) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and

(ii) Comply with the requirements in Subsection R315-319-72.

(iii) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action.

(2) Written retrofit plan

(i) Content of the plan. The owner or operator shall prepare a written retrofit plan that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan shall include, at a minimum, all of the following information:

(A) A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with Section R315-319-102.

(B) A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.

(C) An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.

(D) An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.

(E) A schedule for completing all activities necessary to satisfy the retrofit criteria in Section R315-319-102, including an estimate of the year in which retrofit activities of the CCR unit will be completed.

(ii) Timeframes for preparing the initial written retrofit plan.

(A) No later than 60 days prior to date of initiating retrofit activities, the owner or operator shall prepare an initial written retrofit plan consistent with the requirements specified in Subsection R315-319-102(k)(2). For purposes of Sections R315-319-50 through 107, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:

(1) Taken any steps necessary to implement the written retrofit plan; and

(2) Submitted a completed application for a permit or permit modification.

(B) The owner or operator has completed the written retrofit plan when the plan, including the certification required by Subsection R315-319-102(k)(2)(iv), has been placed in the facility's operating record as required by Subsection R315-319-105(j)(1).

(iii) Amendment of a written retrofit plan.

(A) The owner or operator may amend the initial or any subsequent written retrofit plan at any time.

(B) The owner or operator shall amend the written retrofit plan whenever:

(1) There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or

(2) Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.

(C) The owner or operator shall amend the retrofit plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator shall amend the current retrofit plan no later than 30 days following the triggering event.

(iv) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of Section R315-319-102.

(3) Deadline for completion of activities related to the retrofit of a CCR unit. Any CCR surface impoundment that is being retrofitted shall complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in Subsection R315-319-102(f) or, where applicable, Subsection R315-319-103.

(4) Upon completion, the owner or operator shall obtain a certification from a qualified professional engineer verifying that the retrofit activities have been completed in accordance with the retrofit plan specified in Subsection R315-319-102(k)(2) and the requirements of Section R315-319-102.

(5) No later than the date the owner or operator initiates the retrofit of a CCR unit, the owner or operator shall prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(j)(5).

(6) Within 30 days of completing the retrofit activities specified in Subsection R315-319-102(k)(1), the owner or operator shall prepare a notification of completion of retrofit activities. The notification shall include the certification by a qualified professional engineer as required by Subsection R315-319-102 (k)(4). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(j)(6).

(7) At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of Subsection R315-319-102.

(8) The owner or operator of the CCR unit shall comply with the retrofit recordkeeping requirements specified in Subsection R315-319-105(j), the retrofit notification requirements specified in Subsection R315-319-106(j), and the retrofit Internet requirements specified in Subsection R315-319-107(j).

R315-319-103. Closure and Post-Closure Care - Alternative Closure Requirements.

The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to Subsection R315-319-101(a), (b)(1), or (d) may continue to receive CCR in the unit provided the owner or operator meets the requirements of either Subsection R315-319-103(a) or (b).

(a)(1) No alternative CCR disposal capacity. Notwithstanding the provisions of Subsection R315-319-101(a), (b)(1), or (d), a CCR unit may continue to receive CCR if the owner or operator of the CCR unit certifies that the CCR shall continue to be managed in that CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under Subsection R315-319-103(a)(1), the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under Section R315-319-103;

(ii) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this subsection lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator shall arrange to use such capacity as soon as feasible;

(iii) The owner or operator shall remain in compliance with all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action; and

(iv) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR unit shall cease receiving CCR and initiate closure following the timeframes in Subsections R315-319-102(e) and (f).

(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit shall cease receiving CCR and close in accordance with the timeframes in Subsections R315-319-102(e) and (f).

(b)(1) Permanent cessation of a coal-fired boiler(s) by a date certain. Notwithstanding the provisions of Subsections R315-319-101(a), (b)(1), and (d), a CCR unit may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframes specified in Subsections R315-319-103(b)(2) through (4), but in the interim period, prior to closure of the coal-fired boiler, the facility shall continue to use the CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under this Subsection R315-319-103(b)(1), the owner or operator of the CCR unit shall document that all of the following conditions have been met:

(i) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under Section R315-319-103.

(ii) The owner or operator shall remain in compliance with all other requirements of Sections R315-319-50 through 107, including the requirement to conduct any necessary corrective action; and

(iii) The owner or operator shall prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

(2) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler shall cease operation and the CCR surface impoundment shall have completed closure no later than October 17, 2023.

(3) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler shall cease operation, and the CCR surface impoundment shall complete closure no later than October 17, 2028.

(4) For a CCR landfill, the coal-fired boiler shall cease

operation, and the CCR landfill shall complete closure no later than April 19, 2021.

(c) Required notices and progress reports. An owner or operator of a CCR unit that closes in accordance with Subsection R315-319-103(a) or (b) shall complete the notices and progress reports specified in Subsections R315-319-103(c)(1) through (3).

(1) Within six months of becoming subject to closure pursuant to Subsection R315-319-101(a), (b)(1), or (d), the owner or operator shall prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of Section R315-319-103. The notification shall describe why the CCR unit qualifies for the alternative closure provisions under either Subsection R315-319-103(a) or (b), in addition to providing the documentation and certifications required by Subsection R315-319-103(a) or (b).

(2) The owner or operator shall prepare the periodic progress reports required by Subsection R315-319-103(a)(1)(iv) or (b)(1)(iii), in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports shall be completed according to the following schedule:

(i) The first annual progress report shall be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by Subsection R315-319-103(c)(1).

(ii) The second annual progress report shall be prepared no later than 12 months after completing the first annual progress report. Additional annual progress reports shall be prepared within 12 months of completing the previous annual progress report.

(iii) The owner or operator has completed the progress reports specified in Subsection R315-319-103(c)(2) when the reports are placed in the facility's operating record as required by Subsection R315-319-105(i)(10).

(3) An owner or operator of a CCR unit shall also prepare the notification of intent to close a CCR unit as required by Subsection R315-319-102(g).

(d) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the Internet requirements specified in Subsection R315-319-107(i).

R315-319-104. Closure and Post-Closure Care - Post-Closure Care Requirements.

(a) Applicability.

(1) Except as provided by either Subsection R315-319-104(a)(2) or (3), Section R315-319-104 applies to the owners or operators of CCR landfills, CCR surface impoundments, and all lateral expansions of CCR units that are subject to the closure criteria under Section R315-319-102.

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by Subsection R315-319-102(c) is not subject to the post-closure care criteria under Section R315-319-104.

(3) An owner or operator of an inactive CCR surface impoundment that elects to close a CCR unit pursuant to the requirements under Subsection R315-319-100(b) is not subject to the post-closure care criteria under Section R315-319-104.

(b) Post-closure care maintenance requirements. Following closure of the CCR unit, the owner or operator shall conduct post-closure care for the CCR unit, which shall consist of at least the following:

(1) Maintaining the integrity and effectiveness of the final cover system, including making repairs to the final cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) If the CCR unit is subject to the design criteria under Section R315-319-70, maintaining the integrity and effectiveness of the leachate collection and removal system and operating the leachate collection and removal system in accordance with the requirements of Section R315-319-70; and

(3) Maintaining the groundwater monitoring system and monitoring the groundwater in accordance with the requirements of Sections R315-319-90 through 98.

(c) Post-closure care period.

(1) Except as provided by Subsection R315-319-104(c)(2), the owner or operator of the CCR unit shall conduct post-closure care for 30 years.

(2) If at the end of the post-closure care period the owner or operator of the CCR unit is operating under assessment monitoring in accordance with Section R315-319-95, the owner or operator shall continue to conduct post-closure care until the owner or operator returns to detection monitoring in accordance with Section R315-319-95.

(d) Written post-closure plan

(1) Content of the plan. The owner or operator of a CCR unit shall prepare a written post-closure plan and any amendments to the plan. The plan shall include, at a minimum, the information specified in Subsections R315-319-104(d)(1)(i) through (iii).

(i) A description of the monitoring and maintenance activities required in Subsection R315-319-104(b) for the CCR unit, and the frequency at which these activities will be performed;

(ii) The name, address, telephone number, and email address of the person or office to contact about the facility during the post-closure care period; and

(iii) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in Sections R315-319-50 through 107. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration shall be certified by a qualified professional engineer, and notification shall be provided to the Director that the demonstration has been placed in the operating record and on the owners or operator's publicly accessible Internet site.

(2) Deadline to prepare the initial written post-closure plan

(i) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit shall prepare an initial written post-closure plan consistent with the requirements specified in Subsection R315-319-104(d)(1).

(ii) New CCR landfills, new CCR surface impoundments, and any lateral expansion of a CCR unit. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator shall prepare an initial written post-closure plan consistent with the requirements specified in Subsection R315-319-104(d)(1).

(iii) The owner or operator has completed the written post-closure plan when the plan, including the certification required by Subsection R315-319-104(d)(4), has been placed in the facility's operating record as required by Subsection R315-319-105(i)(4).

(3) Amendment of a written post-closure plan.

(i) The owner or operator may amend the initial or any subsequent written post-closure plan developed pursuant to Subsection R315-319-104(d)(1) at any time.

(ii) The owner or operator shall amend the written closure plan whenever:

(A) There is a change in the operation of the CCR unit that would substantially affect the written post-closure plan in effect; or

(B) After post-closure activities have commenced, unanticipated events necessitate a revision of the written post-closure plan.

(iii) The owner or operator shall amend the written post-closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written post-closure plan. If a written post-closure plan is revised after post-closure activities have commenced for a CCR unit, the owner or operator shall amend the written post-closure plan no later than 30 days following the triggering event.

(4) The owner or operator of the CCR unit shall obtain a written certification from a qualified professional engineer that the initial and any amendment of the written post-closure plan meets the requirements of Section R315-319-104.

(e) Notification of completion of post-closure care period. No later than 60 days following the completion of the post-closure care period, the owner or operator of the CCR unit shall prepare a notification verifying that post-closure care has been completed. The notification shall include the certification by a qualified professional engineer verifying that post-closure care has been completed in accordance with the closure plan specified in Subsection R315-319-104(d) and the requirements of Section R315-319-104. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by Subsection R315-319-105(i)(13).

(f) The owner or operator of the CCR unit shall comply with the recordkeeping requirements specified in Subsection R315-319-105(i), the notification requirements specified in Subsection R315-319-106(i), and the Internet requirements specified in Subsection R315-319-107(i).

R315-319-105. Recordkeeping, Notification, and Posting of Information to the Internet - Recordkeeping Requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall maintain files of all information required by Section R315-319-105 in a written operating record at their facility.

(b) Unless specified otherwise, each file shall be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.

(c) An owner or operator of more than one CCR unit subject to the provisions of Sections R315-319-50 through 107 may comply with the requirements of Section R315-319-105 in one recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.

(d) The owner or operator of a CCR unit shall submit to the Director any demonstration or documentation required by Sections R315-319-50 through 107.

(e) Location restrictions. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the demonstrations documenting whether or not the CCR unit is in compliance with the requirements under Subsections R315-319-60(a), 61(a), 62(a), 63(a), and 64(a), as it becomes available, in the facility's operating record.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information, as it becomes available, in the facility's operating record:

(1) The design and construction certifications as required by Subsections R315-319-70(e) and (f).

(2) The documentation of liner type as required by Subsection R315-319-71(a).

(3) The design and construction certifications as required by Subsections R315-319-72(c) and (d).

(4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by Subsections R315-319-73(a)(1) and 74(a)(1).

(5) The initial and periodic hazard potential classification assessments as required by Subsections R315-319-73(a)(2) and 74(a)(2).

(6) The emergency action plan (EAP), and any amendment of the EAP, as required by Subsections R315-319-73(a)(3) and 74(a)(3), except that only the most recent EAP shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders as required by Subsections R315-319-73(a)(3)(i)(E) and 74(a)(3)(i)(E).

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by Subsections R315-319-73(a)(3)(v) and 74(a)(3)(v).

(9) The history of construction, and any revisions of it, as required by Subsection R315-319-73(c), except that these files shall be maintained until the CCR unit completes closure of the unit in accordance with Section R315-319-102.

(10) The initial and periodic structural stability assessments as required by Subsections R315-319-73(d) and 74(d).

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by Subsections R315-319-73(d)(2) and 74(d)(2).

(12) The initial and periodic safety factor assessments as required by Subsections R315-319-73(e) and 74(e).

(13) The design and construction plans, and any revisions of it, as required by Subsection R315-319-74(c), except that these files shall be maintained until the CCR unit completes closure of the unit in accordance with Section R315-319-102.

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by Subsection R315-319-80(b), except that only the most recent control plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(2) The annual CCR fugitive dust control report required by Subsection R315-319-80(c).

(3) The initial and periodic run-on and run-off control system plans as required by Subsection R315-319-81(c).

(4) The initial and periodic inflow design flood control system plan as required by Subsection R315-319-82(c).

(5) Documentation recording the results of each inspection and instrumentation monitoring by a qualified person as required by Subsection R315-319-83(a).

(6) The periodic inspection report as required by

Subsection R315-319-83(b)(2).

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by Subsections R315-319-83(b)(5) and 84(b)(5).

(8) Documentation recording the results of the weekly inspection by a qualified person as required by Subsection R315-319-84(a).

(9) The periodic inspection report as required by Subsection R315-319-84(b)(2).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The annual groundwater monitoring and corrective action report as required by Subsection R315-319-90(e).

(2) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as required by Subsection R315-319-91(e)(1).

(3) The groundwater monitoring system certification as required by Subsection R315-319-91(f).

(4) The selection of a statistical method certification as required by Subsection R315-319-93(f)(6).

(5) Within 30 days of establishing an assessment monitoring program, the notification as required by Subsection R315-319-94(e)(3).

(6) The results of appendices III and IV to Rule R315-319 constituent concentrations as required by Subsection R315-319-95(d)(1).

(7) Within 30 days of returning to a detection monitoring program, the notification as required by Subsection R315-319-95(e).

(8) Within 30 days of detecting one or more constituents in appendix IV to Rule R315-319 at statistically significant levels above the groundwater protection standard, the notifications as required by Subsection R315-319-95(g).

(9) Within 30 days of initiating the assessment of corrective measures requirements, the notification as required by Subsection R315-319-95(g)(5).

(10) The completed assessment of corrective measures as required by Subsection R315-319-96(d).

(11) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by Subsection R315-319-96(e).

(12) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by Subsection R315-319-97(a), except that the selection of remedy report shall be maintained until the remedy has been completed.

(13) Within 30 days of completing the remedy, the notification as required by Subsection R315-319-98(e).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The notification of intent to initiate closure of the CCR unit as required by Subsection R315-319-100(c)(1).

(2) The annual progress reports of closure implementation as required by Subsections R315-319-100(c)(2)(i) and (ii).

(3) The notification of closure completion as required by Subsection R315-319-100(c)(3).

(4) The written closure plan, and any amendment of the plan, as required by Subsection R315-319-102(b), except that only the most recent closure plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(5) The written demonstration(s), including the certification required by Subsection R315-319-102(e)(2)(iii), for a time extension for initiating closure as required by Subsection R315-319-102(e)(2)(ii).

(6) The written demonstration(s), including the certification required by Subsection R315-319-102(f)(2)(iii), for a time extension for completing closure as required by Subsection R315-319-102(f)(2)(i).

(7) The notification of intent to close a CCR unit as required by Subsection R315-319-102(g).

(8) The notification of completion of closure of a CCR unit as required by Subsection R315-319-102(h).

(9) The notification recording a notation on the deed as required by Subsection R315-319-102(i).

(10) The notification of intent to comply with the alternative closure requirements as required by Subsection R315-319-103(c)(1).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-103(c)(2).

(12) The written post-closure plan, and any amendment of the plan, as required by Subsection R315-319-104(d), except that only the most recent closure plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105(b).

(13) The notification of completion of post-closure care period as required by Subsection R315-319-104(e).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall, as it becomes available, place the following information in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by Subsection R315-319-102(k)(2), except that only the most recent retrofit plan shall be maintained in the facility's operating record irrespective of the time requirement specified in Subsection R315-319-105 (b).

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures in Subsection R315-319-103.

(3) The annual progress reports required under the alternative requirements as required by Subsection R315-319-103.

(4) The written demonstration(s), including the certification in Subsection R315-319-102(f)(2)(iii), for a time extension for completing retrofit activities as required by Subsection R315-319-102(k)(3).

(5) The notification of intent to initiate retrofit of a CCR unit as required by Subsection R315-319-102(k)(5).

(6) The notification of completion of retrofit activities as required by Subsection R315-319-102(k)(6).

R315-319-106. Recordkeeping, Notification, and Posting of Information to the Internet Notification Requirements.

(a) The notifications required under Subsections R315-319-106(e) through (i) shall be sent to the Director before the close of business on the day the notification is required to be completed. For purposes of Section R315-319-106, before the close of business means the notification shall be postmarked or sent by electronic mail (email). If a notification deadline falls on a weekend or federal holiday, the notification deadline is automatically extended to the next business day.

(b) Reserved

(c) Notifications may be combined as long as the deadline requirement for each notification is met.

(d) Unless otherwise required in Section R315-319-106, the notifications specified in Section R315-319-106 shall be sent to the Director within 30 days of placing in the operating record the information required by Subsection R315-319-105.

(e) Location restrictions. The owner or operator of a CCR unit subject to the requirements of Sections R315-319-

50 through 107 shall notify the Director that each demonstration specified under Subsection R315-319-105(e) has been placed in the operating record and on the owner or operator's publicly accessible internet site.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Within 60 days of commencing construction of a new CCR unit, provide notification of the availability of the design certification specified under Subsection R315-319-105(f)(1) or (3). If the owner or operator of the CCR unit elects to install an alternative composite liner, the owner or operator shall also submit to the Director a copy of the alternative composite liner design.

(2) No later than the date of initial receipt of CCR by a new CCR unit, provide notification of the availability of the construction certification specified under Subsection R315-319-105(f)(1) or (3).

(3) Provide notification of the availability of the documentation of liner type specified under Subsection R315-319-105(f)(2).

(4) Provide notification of the availability of the initial and periodic hazard potential classification assessments specified under Subsection R315-319-105(f)(5).

(5) Provide notification of the availability of emergency action plan (EAP), and any revisions of the EAP, specified under Subsection R315-319-105(f)(6).

(6) Provide notification of the availability of documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under Subsection R315-319-105(f)(7).

(7) Provide notification of documentation prepared by the owner or operator recording all activations of the emergency action plan specified under Subsection R315-319-105(f)(8).

(8) Provide notification of the availability of the history of construction, and any revision of it, specified under Subsection R315-319-105(f)(9).

(9) Provide notification of the availability of the initial and periodic structural stability assessments specified under Subsection R315-319-105(f)(10).

(10) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(f)(11).

(11) Provide notification of the availability of the initial and periodic safety factor assessments specified under Subsection R315-319-105(f)(12).

(12) Provide notification of the availability of the design and construction plans, and any revision of them, specified under Subsection R315-319-105(f)(13).

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the availability of the CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under Subsection R315-319-105(g)(1).

(2) Provide notification of the availability of the annual CCR fugitive dust control report specified under Subsection R315-319-105(g)(2).

(3) Provide notification of the availability of the initial and periodic run-on and run-off control system plans specified under Subsection R315-319-105(g)(3).

(4) Provide notification of the availability of the initial and periodic inflow design flood control system plans specified under Subsection R315-319-105(g)(4).

(5) Provide notification of the availability of the periodic inspection reports specified under Subsection R315-319-105(g)(6).

(6) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(g)(7).

(7) Provide notification of the availability of the periodic inspection reports specified under Subsection R315-319-105(g)(9).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the availability of the annual groundwater monitoring and corrective action report specified under Subsection R315-319-105(h)(1).

(2) Provide notification of the availability of the groundwater monitoring system certification specified under Subsection R315-319-105(h)(3).

(3) Provide notification of the availability of the selection of a statistical method certification specified under Subsection R315-319-105(h)(4).

(4) Provide notification that an assessment monitoring programs has been established specified under Subsection R315-319-105(h)(5).

(5) Provide notification that the CCR unit is returning to a detection monitoring program specified under Subsection R315-319-105(h)(7).

(6) Provide notification that one or more constituents in appendix IV to Rule R315-319 have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under Subsection R315-319-105(h)(8).

(7) Provide notification that an assessment of corrective measures has been initiated specified under Subsection R315-319-105(h)(9).

(8) Provide notification of the availability of assessment of corrective measures specified under Subsection R315-319-105(h)(10).

(9) Provide notification of the availability of the semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report specified under Subsection R315-319-105(h)(12).

(10) Provide notification of the completion of the remedy specified under Subsection R315-319-105(h)(13).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the intent to initiate closure of the CCR unit specified under Subsection R315-319-105(i)(1).

(2) Provide notification of the availability of the annual progress reports of closure implementation specified under Subsection R315-319-105(i)(2).

(3) Provide notification of closure completion specified under Subsection R315-319-105(i)(3).

(4) Provide notification of the availability of the written closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(4).

(5) Provide notification of the availability of the

demonstration(s) for a time extension for initiating closure specified under Subsection R315-319-105(i)(5).

(6) Provide notification of the availability of the demonstration(s) for a time extension for completing closure specified under Subsection R315-319-105(i)(6).

(7) Provide notification of intent to close a CCR unit specified under Subsection R315-319-105(i)(7).

(8) Provide notification of completion of closure of a CCR unit specified under Subsection R315-319-105(i)(8).

(9) Provide notification of the deed notation as required by Subsection R315-319-105(i)(9).

(10) Provide notification of intent to comply with the alternative closure requirements specified under Subsection R315-319-105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-105(i)(11).

(12) Provide notification of the availability of the written post-closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(12).

(13) Provide notification of completion of post-closure care specified under Subsection R315-319-105(i)(13).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall notify the Director when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator shall:

(1) Provide notification of the availability of the written retrofit plan, and any amendment of the plan, specified under Subsection R315-319-105(j)(1).

(2) Provide notification of intent to comply with the alternative retrofit requirements specified under Subsection R315-319-105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by Subsection R315-319-105(j)(3).

(4) Provide notification of the availability of the demonstration(s) for a time extension for completing retrofit activities specified under Subsection R315-319-105(j)(4).

(5) Provide notification of intent to initiate retrofit of a CCR unit specified under Subsection R315-319-105(j)(5).

(6) Provide notification of completion of retrofit activities specified under Subsection R315-319-105(j)(6).

R315-319-107. Recordkeeping, Notification, and Posting of Information to the Internet - Publicly Accessible Internet Site Requirements.

(a) Each owner or operator of a CCR unit subject to the requirements of Sections R315-319-50 through 107 shall maintain a publicly accessible Internet site, CCR Web site, containing the information specified in Section R315-319-107. The owner or operator's Web site shall be titled "CCR Rule Compliance Data and Information."

(b) An owner or operator of more than one CCR unit subject to the provisions of Sections R315-319-50 through 107 may comply with the requirements of Section R315-319-107 by using the same Internet site for multiple CCR units provided the CCR Web site clearly delineates information by the name or identification number of each unit.

(c) Unless otherwise required in Section R315-319-107, the information required to be posted to the CCR Web site shall be made available to the public for at least five years following the date on which the information was first posted to the CCR Web site.

(d) Unless otherwise required in Section R315-319-107, the information shall be posted to the CCR Web site within 30 days of placing the pertinent information required by Subsection R315-319-105 in the operating record.

(e) Location restrictions. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place each demonstration specified under Subsection R315-319-105(e) on the owner or operator's CCR Web site.

(f) Design criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) Within 60 days of commencing construction of a new unit, the design certification specified under Subsection R315-319-105(f)(1) or (3).

(2) No later than the date of initial receipt of CCR by a new CCR unit, the construction certification specified under Subsection R315-319-105(f)(1) or (3).

(3) The documentation of liner type specified under Subsection R315-319-105(f)(2).

(4) The initial and periodic hazard potential classification assessments specified under Subsection R315-319-105(f)(5).

(5) The emergency action plan (EAP) specified under Subsection R315-319-105(f)(6), except that only the most recent EAP shall be maintained on the CCR Web site irrespective of the time requirement specified in Subsection R315-319-107(c).

(6) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under Subsection R315-319-105(f)(7).

(7) Documentation prepared by the owner or operator recording any activation of the emergency action plan specified under Subsection R315-319-105(f)(8).

(8) The history of construction, and any revisions of it, specified under Subsection R315-319-105(f)(9).

(9) The initial and periodic structural stability assessments specified under Subsection R315-319-105(f)(10).

(10) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(f)(11).

(11) The initial and periodic safety factor assessments specified under Subsection R315-319-105(f)(12).

(12) The design and construction plans, and any revisions of them, specified under Subsection R315-319-105(f)(13).

(g) Operating criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under Subsection R315-319-105(g)(1) except that only the most recent plan shall be maintained on the CCR Web site irrespective of the time requirement specified in Subsection R315-319-107(c).

(2) The annual CCR fugitive dust control report specified under Subsection R315-319-105(g)(2).

(3) The initial and periodic run-on and run-off control system plans specified under Subsection R315-319-105(g)(3).

(4) The initial and periodic inflow design flood control system plans specified under Subsection R315-319-105(g)(4).

(5) The periodic inspection reports specified under Subsection R315-319-105(g)(6).

(6) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under Subsection R315-319-105(g)(7).

(7) The periodic inspection reports specified under Subsection R315-319-105(g)(9).

(h) Groundwater monitoring and corrective action. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on

the owner or operator's CCR Web site:

(1) The annual groundwater monitoring and corrective action report specified under Subsection R315-319-105(h)(1).

(2) The groundwater monitoring system certification specified under Subsection R315-319-105(h)(3).

(3) The selection of a statistical method certification specified under Subsection R315-319-105(h)(4).

(4) The notification that an assessment monitoring programs has been established specified under Subsection R315-319-105(h)(5).

(5) The notification that the CCR unit is returning to a detection monitoring program specified under Subsection R315-319-105(h)(7).

(6) The notification that one or more constituents in appendix IV to Rule R315-319 have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under Subsection R315-319-105(h)(8).

(7) The notification that an assessment of corrective measures has been initiated specified under Subsection R315-319-105(h)(9).

(8) The assessment of corrective measures specified under Subsection R315-319-105(h)(10).

(9) The semiannual reports describing the progress in selecting and designing remedy and the selection of remedy report specified under Subsection R315-319-105(h)(12), except that the selection of the remedy report shall be maintained until the remedy has been completed.

(10) The notification that the remedy has been completed specified under Subsection R315-319-105(h)(13).

(i) Closure and post-closure care. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The notification of intent to initiate closure of the CCR unit specified under Subsection R315-319-105(i)(1).

(2) The annual progress reports of closure implementation specified under Subsection R315-319-105(i)(2).

(3) The notification of closure completion specified under Subsection R315-319-105(i)(3).

(4) The written closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(4).

(5) The demonstration(s) for a time extension for initiating closure specified under Subsection R315-319-105(i)(5).

(6) The demonstration(s) for a time extension for completing closure specified under Subsection R315-319-105(i)(6).

(7) The notification of intent to close a CCR unit specified under Subsection R315-319-105(i)(7).

(8) The notification of completion of closure of a CCR unit specified under Subsection R315-319-105(i)(8).

(9) The notification recording a notation on the deed as required by Subsection R315-319-105(i)(9).

(10) The notification of intent to comply with the alternative closure requirements as required by Subsection R315-319-105(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by Subsection R315-319-105(i)(11).

(12) The written post-closure plan, and any amendment of the plan, specified under Subsection R315-319-105(i)(12).

(13) The notification of completion of post-closure care specified under Subsection R315-319-105(i)(13).

(j) Retrofit criteria. The owner or operator of a CCR unit subject to Sections R315-319-50 through 107 shall place the following information on the owner or operator's CCR Web site:

(1) The written retrofit plan, and any amendment of the plan, specified under Subsection R315-319-105(j)(1).

(2) The notification of intent to comply with the alternative retrofit requirements as required by Subsection R315-319-105(j)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by Subsection R315-319-105(j)(3).

(4) The demonstration(s) for a time extension for completing retrofit activities specified under Subsection R315-319-105(j)(4).

(5) The notification of intent to retrofit a CCR unit specified under Subsection R315-319-105(j)(5).

(6) The notification of completion of retrofit activities specified under Subsection R315-319-105(j)(6).

R315-319-108. Appendix III to Rule R315-319 - Constituents for Detection Monitoring.

Table

Common name(1)
Boron
Calcium
Chloride
Fluoride
pH
Sulfate
Total Dissolved Solids (TDS)

(1)Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

R315-319-109. Appendix IV to Rule R315-319 - Constituents for Assessment Monitoring.

Table

Common name(1)
Antimony
Arsenic
Barium
Beryllium
Cadmium
Chromium
Cobalt
Fluoride
Lead
Lithium
Mercury
Molybdenum
Selenium
Thallium
Radium 226 and 228 combined

(1)Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

KEY: permit, solid waste, coal ash
September 1, 2016 19-6-108

R356. Governor, Criminal and Juvenile Justice (State Commission on).
R356-101. Judicial Nominating Commissions.
R356-101-1. Definitions.

As used in R356-101:

(1) "Application period" means the period of time during which applications for a judicial vacancy may be submitted and begins with the posting of a notice of vacancy and ends with the closing period for submitting applications as identified in the notice of vacancy. The application period is part of the recruitment period.

(2) "CCJJ" means the staff of the Commission on Criminal and Juvenile Justice.

(3) "Commission" means the judicial nominating commission having authority over the judicial vacancy.

(4) "Commission staff" means the individuals assigned by the governor to provide staff support to the commission pursuant to Utah Code Annotated Section 78A-10-203(2) or 78A-10-303(2).

(5) "Notice of vacancy" means the announcement of a current or pending judicial vacancy by CCJJ to the public as provided in R356-101-3.

(6) "Organizational meeting" means the first meeting of a commission after the close of the recruitment period.

(7) "Recruitment period" means the period of time beginning with the posting of a notice of vacancy and ending with the completion of all tasks necessary to convene the commission. The recruitment period includes the application period.

R356-101-2. Recruitment Period.

(1) CCJJ shall begin the recruitment period for a judicial vacancy 235 days before the effective date of the judicial vacancy unless sufficient notice is not given, in which case CCJJ shall begin the recruitment period within 10 days of receipt of notice of the judicial vacancy by the governor.

(2) The application period for a judicial vacancy shall be a minimum of 30 days.

(3) The recruitment period for a judicial vacancy shall be a minimum of 30 days but not more than 90 days unless fewer than nine applications are received for a judicial vacancy in which case the recruitment period may be extended up to an additional 30 days.

R356-101-3. Notice of Vacancy.

(1) As part of the recruitment period, CCJJ shall post a notice of vacancy on its website and shall provide a notice of vacancy to:

(a) the Utah State Bar to be distributed to its members;

(b) members of the media;

(c) the Administrative Office of the Courts;

(d) the president of the Utah Senate; and

(e) other offices and associations as CCJJ determines appropriate.

(2) The notice of vacancy shall include:

(a) the jurisdiction of the court in which the vacancy occurs;

(b) the constitutional minimum requirements for judicial office;

(c) a brief description of the work of the court;

(d) the method for obtaining application forms;

(e) the application deadline; and

(f) the method for submitting oral or written comments at a meeting of the commission.

R356-101-4. Applications.

(1) Applications for a judicial vacancy shall include:

(a) an application form established by CCJJ which shall require applicants to provide:

(i) education history;

(ii) work history;

(iii) evidence of constitutional qualifications;

(iv) information regarding litigation as a party;

(v) attorney and judicial references as provided in R395-101-5; and

(vi) other information relevant to fitness to serve as a judge as determined by CCJJ;

(b) a waiver of the right to review the records in the nomination and appointment processes;

(c) a waiver of confidentiality of records which are the subject of investigation by the commission;

(d) an authorization for CCJJ to obtain consumer reports about the applicant; and

(e) a one paragraph summary of professional qualifications that will be made available to the public if the applicant's name is released for public comment prior to nomination.

(2) Applicants shall submit:

(a) an original and eight copies of the complete application;

(b) an original and eight copies of the applicant's resume; and

(c) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.

(3) If the applicant has applied for another judicial position within the prior year, the applicant may satisfy the application requirements by submitting:

(a) a letter to CCJJ expressing interest in applying for the judicial vacancy and in using the previously submitted application; and

(b) a check made payable to CCJJ in an amount specified by CCJJ to cover the cost of a credit check.

(4) CCJJ shall establish application forms and make the forms available electronically and in hard copies.

(5) Applications are considered timely submitted if CCJJ receives all application materials prior to the application deadline. Applications mailed, but not received by CCJJ, prior to the application deadline are not considered timely submitted. Partial applications are not considered timely submitted.

(6) Following receipt of applications, CCJJ shall conduct investigations in the following areas for each applicant:

(a) criminal background;

(b) disciplinary actions taken by the Utah State Bar;

(c) disciplinary actions taken by the Judicial Conduct Commission; and

(d) consumer credit.

R356-101-5. References.

(1) Applicants who are engaged in an adversarial practice shall submit the following types of references as specified in the application:

(a) lawyers adverse to the applicant in litigation or negotiations;

(b) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;

(c) judges assigned to cases in which the applicant acted as a lawyer; and

(d) judges who know the applicant.

(2) Applicants who are engaged in a non-adversarial practice and who are not judges shall submit the following types of references as specified in the application:

(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years; and

(b) judges who know the applicant.

(3) Applicants who are judges shall submit the following types of references as specified in the application:

(a) lawyers with whom the applicant has had a substantial professional interaction within the previous two years;

(b) judges who know the applicant; and

(c) lawyers who represented parties in cases over which the applicant presided as judge.

(4) CCJJ shall select which references will be contacted and requested to complete a standard reference form established by CCJJ.

R356-101-6. Pre-Screening of Applications.

(1) CCJJ shall review the applications upon the passing of the application deadline and remove all applications submitted by applicants who do not meet the constitutional qualifications.

(2) CCJJ shall provide to all members of the commission a list of all applicants identified as not meeting the constitutional qualifications.

R356-101-7. Meetings of the Commission.

(1) The commission shall convene an organizational meeting within 10 days of the end of the recruitment period.

(2) During the organizational meeting the commission shall:

(a) allow public comment concerning:

(i) the nominating process;

(ii) qualifications for judicial office;

(iii) issues facing the judiciary; and

(iv) other issues as determined appropriate by the commission; and

(b) following public comment, close the meeting to the public to:

(i) establish a timeframe for certifying a list of nominees to the governor;

(ii) discuss applicants; and

(iii) discuss conflicts of interest as provided in R356-101-9.

(3) The Commission may meet as necessary to certify the list of nominees to the governor, but shall certify the list of nominees no later than 45 days after convening the organizational meeting.

(4) The chair of the commission presides at all meetings and ensures that each commissioner has the opportunity to be a full participant in the commission process.

(5) The member of the Judicial Council appointed by the chief justice of the Utah Supreme Court pursuant to Utah Code Annotated Section 78A-10-202(6) or 78A-10-302(8) shall be a full participant in discussions of the commission, but may not vote.

(6) The commission staff shall:

(a) ensure that the commission follows the rules promulgated by CCJJ;

(b) resolve any questions regarding the rules promulgated by CCJJ;

(c) take summary minutes of commission meetings which shall include:

(i) the date, time and place of the meeting;

(ii) a list of the commission members present and a list of those absent or excused;

(iii) a list of commission staff present;

(iv) a general description of the decisions made;

(v) any declarations by commission members of a relationship, interest or bias concerning any applicant;

(vi) a record of the total tally of all votes, but not the vote of individual commission members;

(vii) written statements submitted to the commission; and

(viii) any other matter desired by the commission to be included; and

(d) perform other tasks assigned by the commission that are consistent with governing statutes and rules.

(7)(a) The commission shall determine which applicants will be invited to interview.

(b) Each commission member shall have the opportunity to question applicants during interviews and to discuss the qualifications of applicants.

(c) In questioning applicants and discussing the qualifications of applicants, the chair shall speak last and the member of the Judicial Council appointed by the chief justice of the Utah Supreme Court shall speak next to last.

(8)(a) If a commission member refuses to follow governing statutes or rules, the commission member is disqualified from the commission and the governor shall appoint a replacement.

(b) The commission staff determines whether a commission member refuses to follow governing statutes or rules.

(9)(a) Following all applicant interviews, commission members shall determine by confidential ballot which applicants will be certified to the governor as nominees.

(b) The Appellate Court Nominating Commission shall certify a list of seven names to the governor.

(c) Trial Court Nominating Commissions shall certify a list of five names to the governor.

(10)(a) Prior to certifying the list of nominees to the governor, the commission shall allow public comment on the nominees for a minimum of 10 days.

(b) Following the public comment, the commission may remove an applicant from the list of nominees if:

(i) the commission receives new information about an applicant that demonstrates the applicant is unfit to serve as a judge;

(ii) provides to the applicant being considered for removal from the list of nominees a copy of any written comments received during the public comment period about that applicant;

(iii) allows the applicant being considered for removal from the list the opportunity to respond to the information received during the public comment period; and

(iv) not less than one fewer than the total number of commission members at the meeting vote in favor of removing the applicant from the list of nominees.

(d) If the commission removes an applicant from the list of nominees the commission shall select another nominee from among the interviewed applicants and again allow public comment on the nominees for a minimum of 10 days.

R356-101-8. Certifying the List of Nominees.

(1) After the commission has determined which applicants to include in the list of nominees, it shall deliver the list of nominees to the governor, the president of the Senate and the Office of Legislative Research and General Counsel by letter from the chair of the commission.

(2) Commission staff shall deliver to the governor a copy of the complete application and all related documents for each nominee.

(3)(a) If a nominee withdraws before the governor has made an appointment, the commission may, at the request of the governor, nominate a replacement if it can do so before the expiration of the commission's original 45-day deadline.

(b) Unless time permits, the commission does not need to publish the name of the replacement nominee for public comment.

R356-101-9. Conflicts of Interest.

(1) Commission members shall disclose during the

organizational meeting the existence and nature of a relationship with an applicant that may impact the commission member's ability to fairly and impartially evaluate the applicant or any other applicant.

(2)(a) A commission member who believes they have a relationship with an applicant that will impact their ability to fairly and impartially evaluate an applicant shall recuse themself from the nominating process.

(b) If a commission member discloses a relationship with an applicant and does not recuse themself from the nominating process, the commission may, by majority vote, disqualify the commission member from participation if the commission believes the relationship will impact the commission member's ability to fairly and impartially evaluate an applicant.

(c) A commission member who has recused themself or been disqualified by the commission may rejoin the nominating process if:

(i) the applicant with whom the commission member has a relationship is no longer being considered by the commission; and

(ii) the commission decides, by majority vote, to allow the commission member to participate.

(3) A commission member who is related to an applicant within the third degree shall be disqualified from the nominating process.

R356-101-10. Evaluation Criteria.

(1) In addition to criteria established by the Utah Constitution and the Utah Code Annotated, commission members shall during the nomination process consider the applicants':

(a) integrity;
(b) legal knowledge and ability;
(c) professional experience;
(d) judicial temperament;
(e) work ethic;
(f) financial responsibility;
(g) public service;
(h) ability to perform the work of a judge; and
(i) impartiality.

(2) When evaluating applicants for a juvenile court judge position, commission members shall consider the applicants' interest in, understanding of, and experience with the issues and problems facing children and families.

(3) When evaluating applicants for an appellate court position, commission members shall consider the applicants' ability to give and receive criticism of opinions and arguments without taking offense.

(4) When deciding among applicants for any judicial position whose qualifications, taken as a whole, appear in all other respects to be comparable, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made.

R356-101-11. Confidentiality.

(1) All applications and related documents for a judicial vacancy, names of applicants and all discussions during commission meetings are confidential.

(2)(a) Except as provided in R356-101-8(2) and in this Subsection (2) or as otherwise required by law, commission members and commission staff shall not disclose the details of applications or the details of commission discussions to any person other than commission members or commission staff.

(b) Commission members may disclose the names of applicants only as necessary to make inquiries regarding the qualifications of applicants.

(3)(a) Commission members shall return all applications and related documents to commission staff at the conclusion of the nomination process.

(b) Notes taken by a commission member are not returned to commission staff.

(c) Commission staff shall retain one copy of the application materials in accordance with an approved retention schedule and shall destroy other copies of the application materials.

(4) Commission staff shall destroy all ballots used during the nomination process.

R356-101-12. Notice that a Judge is Removed or Intends to Resign or Retire.

The Administrative Office of the Courts shall immediately notify the governor and CCJJ if it learns that a state judge:

(1) has submitted formal notice of intent to retire;
(2) has submitted formal notice of intent to resign;
(3) has been removed from office: or
(4) has otherwise vacated the judicial office.

KEY: judicial nominating commissions, judges
August 10, 2016 78A-10-103(1)
Notice of Continuation June 26, 2015

R357. Governor, Economic Development.
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 63N-2-807 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 63N-2-802.

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 63N-2-805 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 63N-2-808, 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 63N-2-809.

(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
May 1, 2013 63N-2-801
Notice of Continuation August 2, 2016

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-5. Birth Defects Reporting.
R398-5-1. Purpose and Authority.

This rule establishes reporting requirements for birth defects and stillbirths in Utah and for related test results. Sections 26-1-30(5), (6), (7), (9), (18), (22), 26-10-1(2), 26-10-2, and 26-10-6(1)(d) authorize this rule.

R398-5-2. Definitions.

As used in this rule:

(1) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(2) "Birth defect" means any medical disorder of organ structure, function or biochemistry which is of possible genetic or prenatal origin. This includes any congenital anomaly, indication of hypoxia or genetic metabolic disorder listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with any of the following diagnostic codes: 243, 255.2, 255.4, from 269.2 to 279.9, from 740.0 to 759.9; and from 768.0 to 768.9; or listed in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with any of the following diagnostic codes: E03, E25, from E70 to E90, from D55 to D58, J96.00 to J96.91, P09, and from Q00-Q99.

(3) "Hospital" means general acute hospital, children's specialty hospital, remote-rural hospital licensed under Title 26, Chapter 21.

(4) "Stillbirth" means a pregnancy resulting in a fetal death at 20 weeks gestation or later.

(5) "Clinic" means physician-owned or operated clinic that regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

R398-5-3. Reporting by Hospitals and Birthing Centers.

Each hospital or birthing center that admits a patient and detects or screens for a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect, or is presented with the event of a stillbirth shall report or cause to report to the department within 40 days of discharge the following:

(1) if live born, child's name;
(2) child's date of birth (or date of delivery);
(3) mother's name;
(4) mother's date of birth;
(5) delivery hospital;
(6) birth defects and hypoxia/hypoxemia diagnoses;
(7) pulse oximetry results for all initial and repeat screenings, including limb location;
(8) mother's state of residency at delivery;
(9) child's sex; and
(10) mother's zip code.

R398-5-4. Reporting by Laboratories.

Each laboratory operating in the state that identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

(1) if live born, child's name and date of birth;
(2) mother's name;
(3) mother's date of birth;
(4) date the sample is accepted by the laboratory;
(5) test conducted;
(6) test result; and
(7) mother's state of residency at delivery.

R398-5-5. Record Abstraction.

Hospitals, birthing centers, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the mother's and child's files on their demographic characteristics, family history of birth defects, prenatal and postnatal procedures or treatments (including diagnostics) related to the birth defect or stillbirth, and outcomes of that and other pregnancies by that mother. Hospitals, birthing centers, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the affected child's files, throughout their lifespan.

R398-5-6. Liability.

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

R398-5-7. Penalties.

Pursuant to Section 26-23-6, any person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $1,000 upon an administrative finding of a first violation and up to $3,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court.

KEY: birth defects, birth defect reporting
July 31, 2012 26-1-30(2)(c), (d), (e), (g), (p), (t)
Notice of Continuation September 2, 2014 26-10-1(2)
26-10-2
26-25-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-19A. Coverage for Dialysis Services by an End Stage Renal Disease Facility.
R414-19A-0. Policy Statement.

Dialysis services are provided under the Medicaid State Plan to cover Medicaid recipients principally for the 90-day period between the first dialysis service and commencement of Medicare End-Stage Renal Disease (ESRD) benefits. The State Plan also covers dialysis services for Medicaid recipients who do not qualify for Medicare coverage.

R414-19A-1. Authority.

The provision of clinic services for outpatient dialysis is authorized under the authority of 42 CFR 440.20, 440.90, and the Medicaid State Plan under Clinic Services.

R414-19A-2. Definition.

(1) "Composite Payment" means a per treatment unit of payment that applies to all claims for dialysis services. The composite payment rate includes payment for all training, services, evaluations, laboratory tests, items, supplies, medications, and equipment necessary to treat ESRD or perform dialysis.

(2) "Dialysis" means the type of care or service furnished to an ESRD patient and includes all training, services, evaluations, laboratory tests, items, supplies, medications, and equipment necessary to perform dialysis in a facility, outpatient, or home setting.

(3) "End Stage Renal Disease (ESRD)" means that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

(4) "ESRD facility" means a facility which is enrolled with Utah Medicaid and Medicare to furnish at least one specific dialysis service. Such facilities include:

(a) Renal transplantation center: A hospital unit which is approved to furnish directly transplantation and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis furnished directly or under arrangement. A renal transplantation center may also be a renal dialysis center.

(b) Renal dialysis center: A hospital unit which is approved to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of ESRD dialysis patients (including inpatient dialysis furnished directly or under arrangement). A hospital need not provide renal transplantation to qualify as a renal dialysis center.

(c) Renal dialysis facility: A unit which is approved to furnish dialysis services directly to ESRD patients.

(d) Self -dialysis unit: A unit that is part of an approved renal transplantation center, renal dialysis center, or renal dialysis facility and furnishes self-dialysis services.

(e) Special purpose renal dialysis facility: A renal dialysis facility which is approved to furnish dialysis at special locations on a short term basis to a group of dialysis patients otherwise unable to obtain treatment in the geographical area. The special locations must be either special rehabilitative (including vacation) locations serving ESRD patients temporarily residing there, or locations in need of ESRD facilities under emergency circumstances.

R414-19A-3. Eligibility Requirements.

Dialysis services are available to both categorically and medically needy Medicaid recipients who are not enrolled in a managed care organization.

R414-19A-4. Program Access Requirements.

Dialysis services are available to Medicaid recipients when performed through a state-licensed Medicare-approved dialysis facility that is enrolled with Utah Medicaid.

R414-19A-5. Service Coverage.

(1) Dialysis services, including hemodialysis and peritoneal dialysis treatments provided by an ESRD facility, are a covered service for categorically or medically needy Medicaid recipients for three months pending the establishment of Medicare eligibility.

(a) Medicaid may cover dialysis services for longer than three months if a recipient is not eligible for Medicare.

(b) Medicaid reimburses dialysis services through a composite payment.

(2) Medicaid covers dialysis services, including hemodialysis and peritoneal dialysis treatments performed at home, when they are supervised by an enrolled ESRD facility and performed by an appropriately trained Medicaid recipient for three months pending the establishment of Medicare eligibility.

(3) Medicare becomes the primary reimbursement source for individuals who meet Medicare eligibility criteria. ESRD facilities must assist patients in applying for and pursuing final Medicare eligibility.

R414-19A-6. Standards of Care.

ESRD facilities must comply with the Medicare conditions of participation set forth in 42 CFR 405 and all other applicable federal, state and local laws and regulations for the licensure, certification and registration of the ESRD facility.

R414-19A-7. Limitations.

(1) Payments for dialysis services are eligible only to ESRD facilities that have enrolled with Utah Medicaid and are also enrolled with Medicare as an ESRD provider.

(2) Medicaid reimburses dialysis services through a composite rate. Payment for services which are part of the composite rate may not be reimbursed separately.

(3) Regardless of the dialysis method used, composite payments are limited to one unit per session and no more than one unit per day. Continuous cycling peritoneal dialysis, or any other dialysis services that occur overnight, are eligible for one composite payment.

R414-19A-8. Prior Authorization.

Prior authorization is not required.

R414-19A-9. Reimbursement for Services.

Payment for renal dialysis is based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges.

KEY: Medicaid
August 10, 2016 26-1-5
Notice of Continuation April 7, 2015 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program.
R414-505-1. Introduction and Authority.

This rule defines the participation requirements in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule is authorized under Attachment 4.19-D of the Utah Medicaid State Plan, and by Sections 26-1-5 and 26-18-3.

R414-505-2. Definitions.

In addition to the following, the definitions in Section 26-18-502 and Attachment 4.19-D of the Medicaid State Plan apply to this rule:

(1) "Non-state governmental entity (NSGE)" means a hospital authority, hospital district, healthcare district, special services district, county, or city.

(2) "Non-state government-owned (NSGO) nursing care facility" means a nursing care facility where an NSGE holds the license and is party to the facility's Medicaid provider contract.

(3) "Eligible nursing care facilities" means facilities that are NSGO nursing facilities which comply with the requirements described in this rule.

(4) "Public funds" means funds derived from taxes, assessments, levies, investments, governmental operations, and revenue generated by a special services district and other public revenues within the sole and unrestricted control of an NSGE that holds the license and is party to the Medicaid contract of the eligible nursing care facility. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds and may not be derived from an impermissible source, including recycled Medicaid payments, federal money precluded from use as the non-federal share, impermissible taxes, and non-bona fide provider-related donations.

(5) "Effective date of the change of ownership" means the issue date of the license for the new owner by the Utah Department of Health.

R414-505-3. Nursing Care Facility Non-State Government-Owned Upper Payment Limit Payment Program.

The NF NSGO UPL supplemental payment program is governed by Attachment 4.19-D of the Medicaid State Plan.

R414-505-4. Notice of Intent to Participate.

(1) Required application. Before an NSGO nursing care facility may receive supplemental payments, the appropriate NSGE must certify certain facts, representations, and assurances regarding program requirements. The NSGE must complete the "NF NSGO UPL Program Notice of Participation Form", prescribed by the Medicaid agency.

(2) The required application must be mailed to the correct address, as follows:

Via United States Postal Service:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service, Federal Express, and similar:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(3) The "NSGO NF UPL Program Notice of Participation Form" must be complete and accurate or it will be returned. Incomplete forms shall not be considered as providing notice of intent to participate.

R414-505-5. Requirements to Participate in the NF NSGO UPL Program.

(1)(a) The nursing care facility must be owned by an NSGE.

(b) Prior to the Medicaid agency initiating a contract, the nursing care facility owner shall provide appropriate legal evidence, as determined by the Medicaid agency, demonstrating the nursing care facility is owned by an NSGE.

(c) A nursing care facility participating in this supplemental payment program must notify the Reimbursement Unit within the Bureau of Coverage and Reimbursement Policy, at the address noted above, of changes in ownership that may affect the nursing care facility's continued eligibility within 14 calendar days after such change.

(2) The Utah Medicaid provider enrollment process must be complete.

(3)(a) The NSGE must have an NF NSGO UPL contract in effect, signed by the Utah Department of Health's authorized representative.

(b) The effective date for an NF NSGO UPL contract for a nursing care facility to participate in the NF NSGO UPL supplemental payments shall be the latter of the following dates:

(i) The effective date of the Change of Ownership (CHOW);

(ii) The postmark date of the notice of intent to participate as noted in Section R414-505-4; or

(iii) The effective date of the Medicaid provider enrollment.

(4) Once a contract is in effect, the payments will be made in accordance with Attachment 4.19-D of the Medicaid State Plan and the NF NSGO UPL contract.

(5)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through Intergovernmental Transfer (IGT) Agreements of public funds or other permissible source-of-seed funding from the NSGE that holds the license and is party to the Medicaid contract of the nursing care facility.

(b) The NSGE shall ensure that the funds provided to the Department for the non-federal share, via IGT, meet the requirements of 42 CFR 433, Subpart B.

R414-505-6. Intergovernmental Transfer (IGT) Certification.

With its IGT, using the "IGT Certification Form" prescribed by the Medicaid agency, the NSGE shall specify the dollar amount and certify the source of the IGT funds. The NSGE shall specify, on the form, a detailed description of the IGT monies and the legal basis for the monies ability to be used to match federal funds.

KEY: Medicaid
August 12, 2016 **26-1-5**
26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-513. Intergovernmental Transfers.
R414-513-1. Introduction and Authority.

This rule requires documentation accompanying intergovernmental transfer of funds for use as non-federal share of Medicaid payments or administration costs. This rule is authorized by Sections 26-1-5 and 26-18-3.

R414-513-2. Intergovernmental Transfer (IGT) Certification.

With its IGT, using the "IGT Certification Form" prescribed by the Medicaid agency, governmental entities shall specify the dollar amount and certify the source of the IGT funds transferred to the Medicaid agency. The governmental entity shall specify, on the form, a detailed description of the IGT monies and the legal basis for the monies ability to be used to match federal funds.

KEY: Medicaid
August 12, 2016 **26-1-5**
26-18-3

R432. Health, Family Health and Preparedness, Licensing.
R432-2. General Licensing Provisions.
R432-2-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensing rule, with the exception of federally recognized Swing Bed Units, shall submit for Department review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) A "satellite operation" is a health care treatment service that:

(a) is administered by a parent facility within the scope of the parent facility's current license,

(b) is located further than 250 yards from the licensed facility or other areas determined by the department to be a part of the provider's campus,

(c) does not qualify for licensing under Section 26-21-2, and

(d) is approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a satellite operation shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

(a) location of the remote facility (street address);

(b) capacity of the remote facility;

(c) license category of the parent facility;

(d) service to be provided at the remote facility (must be a service authorized under the parent facility license);

(e) ancillary administrative and support services to be provided at the remote facility; and

(f) International Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) There is only a single health care treatment service provided at the remote site and that it falls within the scope of the parent facility license;

(b) The remote facility physical structure complies with all construction codes appropriate for the service provided;

(c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a facility qualifies as a single satellite service treatment center the Department shall issue a separate license identifying the facility as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain a license for the remote complex as a free-standing health care facility.

(6) A satellite facility is not permitted within the confines of another licensed health care facility.

(7) A licensed hospital is limited to one emergency department satellite location.

R432-2-6. Requirements for a Branch Location.

(1) A "Branch Location" is a licensed Home Health, Personal Care or Hospice agency location which:

(a) is administered by a parent agency within the scope of the parent agency's current license;

(b) is located no further than 150 miles from the licensed parent agency or within a designated geographical service area as determined by the Department; and

(c) is approved by the Department as a branch location under the parent agency's license.

(2) An applicant for a branch location license shall submit a narrative of the program for Department review. The narrative shall include the following:

(a) street address of the parent and branch;

(b) license category of the parent agency;

(c) service(s) to be provided at the branch location, which must be a service authorized under the parent agency license; and

(d) ancillary administrative and support services to be provided at the branch location.

(3) Upon receipt of the branch location program narrative, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) the service provided at the remote site falls within the scope of the parent agency license; and

(b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a location qualifies as a branch location the Department shall issue a separate license identifying the agency as a "Branch Location" of the licensed parent agency. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

R432-2-7. Applications for License Actions.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance

report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-7(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

R432-2-8. License Fee.

In accordance with Subsection 26-21-6(1)(d), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

R432-2-9. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-10. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-7.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-11. License Contents and Provisions.

(1) The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) type of facility,

(d) approved licensed capacity including identification of operational and banked beds,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) variance information, and

(h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-12. Expiration and Renewal.

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-9) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-13. New License Required.

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

(a) occupancy of a new or replacement facility.

(b) change of ownership.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the

custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

R432-2-14. Change in Licensing Status.

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity.

(b) change in name of facility.

(c) change in license category.

(d) change of license classification.

(e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

R432-2-15. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.

(b) make provision for the safe keeping of records.

(c) return all patients' monies and valuables at the time of discharge.

(d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

(a) the location and date of discharge for all residents,

(b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and

(c) the date and time that the facility complied with the closure order.

R432-2-16. Provisional License.

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(2) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(3) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months.

(4) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-17. Conditional License.

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;

(b) more than three cited repeat Class I or II violations from the previous year; or

(c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-18. Standard License.

A standard license is a license issued to a licensee if:

(1) the licensee meets the conditions attached to a provisional or conditional license;

(2) the licensee corrects the identified rule violations; or

R432-2-19. Variances.

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved

variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

R432-2-20. Change In Ownership.

(1) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(2) The owner of the health care facility does not need to own the real property or building where the facility operates.

(3) A property owner is also an owner of the facility if he:

(a) retains the right or participates in the operation or business decisions of the enterprise;

(b) has engaged the services of a management company to operate the facility; or

(c) takes over the operation of the facility.

(4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change

(5) Changes in ownership that require action under subsection (4) include any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner; or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.

(6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

KEY: health care facilities

August 4, 2016	**26-21-9**
Notice of Continuation August 12, 2013	**26-21-11**
	26-21-12
	26-21-13

R432. Health, Family Health and Preparedness, Licensing.
R432-14. Birthing Center Construction Rule.
R432-14-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-14-2. Purpose.

This rule provides construction and physical plant standards for birthing centers.

R432-14-3. General Design Requirements.

(1) Birthing centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of section 5.2 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines) and are adopted and incorporated by reference.

(2) Birthing centers shall consist of at least one, but not more than five birth rooms. Licensure is not required for birthing centers with only one birth room.

(3) Birthing rooms and ancillary service areas shall be organized in a contiguous physical arrangement.

(4) Birthing centers with 4 or 5 birth rooms shall comply with NFPA 101, Life Safety Code, Chapter 20, New Ambulatory Health Care Occupancies. Birthing centers with one to three birth rooms shall comply with NFPA 101, Life Safety Code, Chapter 38, New Business Occupancies and NFPA 101 A.3.3.178.3, as indicated in section 5.2-7.1 of the Guidelines.

(5) A Birthing center located contiguous with a general hospital may share radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the birthing center a written agreement for the shared services.

R432-14-4. General Construction Patient Facilities.

(1) Requirements of section 5.2 of the Guidelines shall be met except as modified in this section.

(2) When a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(3) The facility shall be designed to allow access to service areas and common areas without compromising patient privacy.

(4) Birth rooms and service areas shall be grouped to form a physically defined service unit.

(5) Spaces shall be provided for each of the required services.

(6) Interior finishes, lighting, and furnishings shall reflect a residential rather than an institutional setting.

(7) Maximum room occupancy shall be one mother and her newborn infant or infants.

(8) Windows in a birth room with a sight line which permits observation from the exterior shall be arranged or draped to ensure patient privacy.

(9) Birth rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 24 inches by 20 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(10) A toilet room with direct access from the birth room shall be accessible to each birth room.

(a) The toilet room shall contain a toilet and a lavatory. A shower or tub shall be accessible to each birth room and may be located in the toilet room.

(b) A toilet room may serve two birth rooms.

(c) All toilet room fixtures shall be handicapped accessible and shall have grab bars in compliance with ADA/ABA-AG.

(11) Newborn infant resuscitation equipment, including electrical receptacles, oxygen, and suction shall be immediately available to each birth room in addition to resuscitation equipment provided for the mother. Portable oxygen and suction equipment shall be permitted.

(12) A mechanically exhausted area for storage of facility maintenance materials and equipment shall be provided and may be combined with the environmental services room.

(13) Special surgical lighting is not required.

(14) An examination light shall be readily available in each birth room.

(15) An emergency lighting system is required and must include:

(a) emergency exit signs;

(b) sufficient lighting to safely exit the building; and

(c) an examination light.

R432-14-5. Excluded Guidelines and Administrative Code.

(1) The following sections of the Guidelines do not apply:

(a) Location, Subsection 5.2-1.3.1.1;

(b) Soiled workroom 5.2-2.6.10.1; and

(c) Soiled holding room 5.2-2.6.10.2;

(d) Ventilation of Health Care Facilities, Part 6.

(2) The following sections of Administrative Code do not apply:

(a) General construction R432-4-23(5); and

(b) General construction R432-4-23(17).

R432-14-6. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities
August 26, 2016 26-21-5
Notice of Continuation April 10, 2014 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-101. Specialty Hospital - Psychiatric.
R432-101-1. Legal Authority.
This rule is adopted pursuant to Title 26, Chapter 21.

R432-101-2. Purpose.
This rule applies to a hospital that chooses to be licensed as a specialty hospital and where its major single service is psychiatric service. If a specialty hospital chooses to have a dual service, e.g., psychiatric and substance abuse or chemical dependency, then both of the appropriate specialty hospital rules apply.

R432-101-3. Time for Compliance.
All psychiatric specialty hospitals obtaining initial licensure shall fully comply with this rule.

R432-101-4. Definitions.
(1) See Common Definitions in R432-1-3.
(2) Special Definitions.
(a) "Specialty Hospital" means a facility with the following:
(i) a duly constituted governing body with overall administrative and professional responsibility;
(ii) an organized medical staff which provides 24 hour inpatient care;
(iii) a chief executive officer to whom the governing body delegates the responsibility for the operation of the hospital;
(iv) a distinct nursing unit of at least six inpatient beds;
(v) current and complete medical records;
(vi) provide continuous registered nursing supervision and other nursing services;
(vii) provide in house the following basic services:
(A) laboratory;
(B) pharmacy;
(C) emergency services and provision for interim care of traumatized patients coordinated with an appropriate emergency transportation service;
(D) specialized diagnostic and therapeutic facilities, medical staff, and equipment required to provide the type of care in the recognized specialty or specialties for which the hospital is organized.
(viii) provide on-site all basic services required of a general hospital that are needed for the diagnosis, therapy and treatment offered or required by patients admitted to or cared for in the specialty facility;
(b) "Investigational Drug" means a drug that is being investigated for human or animal use by the manufacturer or the Food and Drug Administration (FDA); a drug which has not been approved for use by the FDA;
(c) A "physical restraint" means an involuntary intervention employing any device intended to control or restrict the physical movement of a patient, whether applied directly to the patient's body or applied indirectly to act as a barrier to voluntary movement. Simple safety devices are a type of physical restraint.
(d) "Seclusion" means an involuntary intervention employing a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.
(e) "Secure hospital" means a hospital where traffic in and out of the hospital setting is controlled in order to maintain safety for both patients and the community.
(f) "Stable" means a patient is no longer a danger to himself or others, and is able to function and demonstrate the ability to maintain improvements outside the hospital setting.
(g) "Time out" means isolating a patient for a period of time, on a voluntary basis in an unlocked room. This shall be based on hospital policy, as a procedure designed to remove the patient who is exhibiting a specified behavior from the source of stimulation or reinforcement.
(h) "Activity services" means therapies which involve the principles of art, dance, movement, music, occupational therapy, recreational therapy and other disciplines.
(i) "Plan for Patient Care Services" means a written plan which ensures the care, treatment, rehabilitation, and habilitation services provided are appropriate to the needs of the patient population served and the severity of the disease, condition, impairment, or disability.
(j) "Partial Hospitalization" means a time-limited, ambulatory, active treatment program that offers therapeutically intensive, coordinated and structured clinical services where the daily stay lasts no more than 23 hours with the goal of stabilizing the patient to avert inpatient hospitalization or of reducing the length of a hospital stay.

R432-101-5. Licensure.
License required. See R432-2.

R432-101-6. General Construction Rules.
See R432-7, Psychiatric Construction Rule.

R432-101-7. Organization.
(1) The Governing Body, R432-100-5 applies.
(2) The governing body shall develop through its officers, committees, medical and other staff, a mission statement that includes a Plan for Patient Care Services.

R432-101-8. Administrator.
(1) Refer to R432-100-6.
(2) The administrator shall organize and staff the hospital according to the nature, scope and extent of services offered.

R432-101-9. Professional Staff.
(1) The psychiatric services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided.
(2) Medical and professional staff standards shall comply with R432-100-7. The medical direction of the psychiatric care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff, appointed by the governing body and certified or eligible for certification by the American Board of Psychiatry and Neurology.
(3) Nursing staff standards shall comply with R432-100-13.
(4) The hospital shall provide sufficient qualified, and competent, health care professional and support staff to assess and address patient needs within the Plan for Patient Care Services.
(5) Qualified professional staff members may be employed on a full-time, on a part-time basis or be retained by contract.
(6) Professional staff shall be assigned or assume specific responsibilities on the treatment team as qualified by training and educational experience and as permitted by hospital policy and the scope of the professional license.

R432-101-10. Personnel Management Service.
(1) The hospital shall provide licensed, certified or registered personnel who are able and competent to perform their respective duties, services, and functions.
(2) Written personnel policies and procedures shall include:
(a) job descriptions for each position, including job title,

job summary, responsibilities, minimum qualifications, required skills and licenses, and physical requirements;

(b) a method to handle and resolve grievances from the staff.

(3) All personnel shall have access to hospital policy and procedure manuals, a copy of their position description, and other information necessary to effectively perform duties and carry out responsibilities.

(a) The facility shall conduct a criminal background check with the Department of Public Safety for all employees prior to beginning employment.

(b) The facility is responsible for the security and confidentiality of all information obtained in the criminal background check.

(4) All employees shall be oriented to job requirements and personnel policies, and be provided job training beginning the first day of employment. Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first 30 days of employment.

(a) Registered nurses, licensed practical nurses and psychiatric technologists shall receive additional orientation to the following:

(i) concepts of treatment provided within the hospital;

(ii) roles and functions of nurses in the treatment programs;

(iii) psychotropic medications.

(b) In-service sessions shall be planned and held at least quarterly and be available to all employees. Attendance standards shall be established by policy.

(c) Licensed professional staff shall receive continuing education to keep informed of significant new developments and to be able to develop new skills.

(d) The following in-service staff development topics shall be addressed annually:

(i) fire prevention;

(ii) review and drill of emergency procedures and evacuation plan;

(iii) prevention and control of infections;

(iv) training in the principles of emergency medical care and cardiopulmonary resuscitation for physicians, licensed nursing personnel, and others as appropriate;

(v) proper use and documentation of restraints and seclusion;

(vi) patients' rights, refer to R432-101-15;

(vii) confidentiality of patient information;

(viii) reporting abuse, neglect or exploitation of adults or children; and

(ix) provision of care appropriate to the age of the patient population served.

(5) Volunteers may be utilized in the daily activities of the hospital but shall not be included in the hospital's staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened by the administrator or designee and supervised according to hospital policy.

(b) Volunteers shall be familiar with the hospital's policies and procedures on volunteers, including patient rights and facility emergency procedures.

(6) All hospital personnel shall be licensed, registered, or certified as required by the Utah Department of Commerce. Copies of the current license, registration or certification shall be in the personnel files. Failure to ensure that the individual is appropriately licensed, registered or certified may result in sanctions to the facility license.

R432-101-11. Quality Assurance.

(1) The facility shall have a well-defined quality assurance plan designed to improve the delivery of patient care through evaluation of the quality of patient care services and resolution of identified problems. The plan shall be consistent with the Plan for Patient Care Services.

(2) The plan shall be implemented and include a method for:

(a) identification and assessment of problems, concerns, or opportunities for improvement of patient care;

(b) implementation of actions that are designed to:

(i) eliminate identified problems where possible;

(ii) improve patient care;

(c) documentation of corrective actions and results;

(d) reporting findings and concerns to the medical, nursing, and allied health care staffs, the administrator, and the governing board.

(3) Documentation of minutes of meetings shall be maintained for Department review.

R432-101-12. Infection Control.

(1) The facility shall have a written plan to effectively prevent, identify, report, evaluate and control infections.

(2) The plan shall include a method to collect and monitor data and carry out necessary follow-up actions.

(3) Infection control actions shall be documented consistent with the requirements of the plan and in accordance with Department requirements and standards of medical practice.

(4) In-service education and training of employees shall be provided to all service and program components of the hospital.

(5) The infection control plan shall be reviewed and revised as necessary, but at least annually.

(6) The hospital shall implement an employee health surveillance program and infection control policy which meets the requirements of R432-100-10 and the following:

(a) complete at the time a person is hired, an employee health inventory that includes the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions that may prevent the employee from satisfactorily performing assigned duties.

(b) develop employee health screening and immunization components of personnel health programs in accordance with Rule R386-702, concerning communicable diseases;

(c) employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) all employees with known positive reaction to skin tests are exempt from skin testing.

(d) report all infections and communicable diseases reportable by law to the local health department in accordance with Section R386-702-3, concerning reportable diseases; and

(e) comply with the Occupational Safety and Health Administration's Bloodborne Pathogen Standard.

R432-101-13. Patient Security.

(1) The facility shall provide sufficient internal and external security measures consistent with the Plan for Patient Care Services. There shall be positive supervision and control of the patient populations at all times to assure patient and public safety.

(2) If a facility offers more than one treatment program or serves more than one age group, patient population or

program, the patients shall not be mixed or be co-mingled.

(3) There shall be sufficient supervision to ensure a safe and secure living environment which is defined in the Plan for Patient Care Services.

R432-101-14. Special Treatment Procedures.

There shall be a hospital policy regarding the use of special treatment procedures. It shall include as a minimum:

(1) the use of seclusion, refer to R432-101-23;

(2) the use of restraint, refer to R432-101-23;

(3) the use of convulsive therapy including electroconvulsive therapy;

(4) the use of psychosurgery or other surgical procedures for the intervention or alteration of a mental, emotional or behavioral disorder;

(5) the use of behavior modification with painful stimuli;

(6) the use of unusual, investigational and experimental drugs;

(7) the use of drugs associated with abuse potential and those having substantial risk or undesirable side effects;

(8) an explanation as to whether the hospital will conduct research projects involving inconvenience or risk to the patient; and

(9) involuntary medication administration for emergent and ongoing treatment.

R432-101-15. Patients' Rights.

(1) Each patient shall be provided care and treatment in accordance with the standards and ethics accepted under Title 58 for licensed, registered or certified health care practitioners.

(2) There shall be a committee appointed by the administrator that consists of members of the facility staff, patients or family members, as appropriate, other qualified persons with knowledge of the treatment of mental illness, and at least one person who has no ownership or vested interest in the facility. This committee shall:

(a) review, monitor and make recommendations concerning individual treatment programs established to manage inappropriate behavior, and other programs that, in the opinion of the committee, involve risks to patient safety or restrictions of a patient's rights, or both;

(b) review, monitor and make recommendations concerning facility practices and policies as they relate to drug usage, restraints, seclusion and time out procedures, applications of painful or noxious stimuli, control of inappropriate behavior, protection of patient rights and any other area that the committee believes need to be addressed;

(c) keep minutes of all meetings and communicate the findings to the administrator for appropriate action;

(d) designate a person to act as a patient advocate, to be available to respond to questions and requests for assistance from the patients and to bring to the attention of the committee any issues or items of interest that concern the rights of the patients or their care and status;

(e) recommend written policies with regard to patient rights which are consistent with state law. Once adopted, these policies shall be posted in areas accessible to patients, and made available upon request to the patient, family, next of kin or the public.

(3) The individual treatment plan and clinical orders shall address the following rights to ensure patients are permitted communication with family, friends and others. Restrictions to these rights shall be reviewed by the Patient Rights or Ethics Committee. Limitations to the rights identified in R432-101-15(3)(a) through (d) may be established to protect the patient, other patients or staff or where prohibited by law.

(a) Each patient shall be permitted to send and receive unopened mail.

(b) Each patient shall be afforded reasonable access to a telephone to make and receive unmonitored telephone calls.

(c) Each patient shall be permitted to receive authorized visitors and to speak with them in private.

(d) Each patient shall be permitted to attend and participate in social, community and religious groups.

(e) Each patient shall be afforded the opportunity to voice grievances and recommend changes in policies and services to hospital staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal.

(f) Each patient shall be permitted to communicate via sealed mail with the Utah Department of Human Services, the Utah Department of Health, the Legal Center for the People with Disabilities, legal counsel and the courts. The patient shall be permitted to communicate with and to visit with legal counsel or clergy of choice or both.

(4) Each patient shall be afforded the opportunity to participate in the planning of his care and treatment. The patient's participation in the treatment planning shall be documented in the medical record.

(a) Each patient shall receive an explanation of treatment goals, methods, therapies, alternatives and associated costs.

(b) Each patient shall be able to refuse care and treatment, as permitted by law, including experimental research and any treatment that may result in irreversible conditions.

(c) Each patient shall be informed of his medical condition, upon request, unless medically contraindicated. If contraindicated, the circumstances must be documented in the patient record.

(d) Each patient shall be free from mental and physical abuse and free from chemical and physical restraints except as part of the authorized treatment program, or when necessary to protect the patient from injury to himself or to others.

(5) Each patient shall be afforded the opportunity to exercise all civil rights, including voting, unless the patient has been adjudicated incompetent and not restored to legal capacity.

(a) Patients shall not be required to perform services for the hospital that are not included for therapeutic purposes in the plans of care.

(b) Patients shall not be required to participate in publicity events, fund raising activities, movies or anything that would exploit the patients.

(c) Each patient shall be permitted to exercise religious beliefs and participate in religious worship services without being coerced or forced into engaging in any religious activity.

(d) Each patient shall be permitted to retain and use personal clothing and possessions as space permits, unless doing so would infringe upon rights of other patients or interfere with treatment.

(e) Each patient shall be permitted to manage personal financial affairs, or to be given at least a monthly accounting of financial transactions made on their behalf should the hospital accept a patient's written delegation of this responsibility.

R432-101-16. Emergency and Disaster.

(1) The hospital shall be responsible to assure the safety and well-being of patients.

(a) There must be provisions for the maintenance of a safe environment in the event of an emergency or disaster.

(b) An emergency or disaster may include to utility interruption, such as gas, water, sewer, fuel and electricity,

explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) The administrator or his designee shall be responsible for the development of a plan, coordinated with state and local emergency or disaster offices, to respond to emergencies or disasters.

(a) This plan shall be in writing and list the coordinating authorities by name and title.

(b) The plan shall be distributed or made available to all hospital staff to assure prompt and efficient implementation.

(c) The plan shall be reviewed and updated as necessary in coordination with local emergency or disaster management authorities. The plan shall be available for review by the Department.

(d) The administrator shall be in charge of operations during any significant emergency. If not on the premises, the administrator shall make every reasonable effort to get to the hospital to relieve subordinates and take charge of the situation.

(e) Disaster drills, in addition to fire drills, shall be held semiannually for all staff. Drills and staff response to drills shall be documented.

(f) The facility shall identify and post in a prominent location the name of the person in charge and names and telephone numbers of emergency medical personnel, agencies and appropriate communication and emergency transport systems.

(3) The hospital's emergency response procedures shall address the following:

(a) evacuation of occupants to a safe place within the hospital or to another location;

(b) delivery of essential care and services to hospital occupants by alternate means regardless of setting;

(c) delivery of essential care and services when additional persons are housed in the hospital during an emergency;

(d) delivery of essential care and services to hospital occupants when staff is reduced by an emergency;

(e) maintenance of safe ambient air temperatures within the hospital.

(i) Emergency heating must have the approval of the local fire department.

(ii) An ambient air temperature of 58 degrees F (14 degrees C) or lower may constitute a danger to the health and safety of the patients in the hospital. The person in charge shall take immediate and appropriate action.

(4) The hospital's emergency plan shall delineate shall include:

(a) the person or persons with decision-making authority for fiscal, medical, and personnel management;

(b) on-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(c) assignment of personnel to specific tasks during an emergency;

(d) methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(e) the individuals who shall be notified in an emergency in order of priority;

(f) method of transporting and evacuating patients and staff to other locations;

(g) conversion of hospital for emergency use.

(5) The facility shall schedule and hold at least one fire drill per shift per quarter. The facility shall document the date and time the drill was held, including a brief description of the event and participants. Documentation shall be maintained for review by the Department.

(a) There shall be a fire emergency evacuation plan, written in consultation with qualified fire safety personnel.

(b) A physical plant evacuation diagram delineating evacuation routes, location of fire alarm boxes and fire extinguishers, and emergency telephone numbers of the local fire department shall be posted in exit access ways throughout the hospital.

(c) The written plan shall include fire-containment procedures and how to use the hospital alarm systems and signals.

(d) The actual evacuation of patients during a drill is optional.

R432-101-17. Admission and Discharge.

(1) The hospital shall develop written admission, exclusion and discharge policies consistent with the Plan for Patient Care Services and the Utilization Review plan. These policies shall be available to the public upon request.

(2) The hospital shall make available to the public and each potential patient information regarding the various services provided, methods and therapies used by the hospital, and associated costs of such services.

(3) Admission criteria shall be clearly stated in writing in hospital policies.

(a) The facility shall assess and screen all potential patients prior to admission and admit a patient only if it determines that the facility is the least restrictive setting appropriate for their needs. The pre-screening process shall include an evaluation of the patient's past criminal and violent behavior.

(b) Patients shall be admitted for treatment and care only if the hospital is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the patient.

(c) Patients shall be admitted by, and remain under the care of, a member of the medical staff. There shall be a written order for admission and care of the patient at the time of admission. A documented telephone order is acceptable.

(d) There shall be procedures to govern the referral of ineligible patients to alternate sources of treatment where possible.

(e) Involuntary commitment must be in accordance with Section 62A-5-312.

(f) All out of state adjudicated delinquent juveniles admitted to the hospital shall be processed and monitored through the appropriate Interstate Compact.

(4) The patient shall be discharged when the hospital is no longer able to meet the patient's identified needs, when care can be delivered in a less restrictive setting, or when the patient no longer needs care.

(a) There shall be an order for patient discharge by a member of the medical staff except as indicated in R432-101-17(4)(b) below.

(b) In cases of discharge against medical advice, AMA, the attending physician or qualified designee shall be contacted and the response documented in the patient record.

(c) Discharge planning shall be coordinated with the patient, family, and other parties or agencies who are able to meet the patient's needs.

(d) Upon discharge of a patient, all money and valuables of that patient which have been entrusted to the hospital shall be surrendered to the patient in exchange for a signed receipt.

R432-101-18. Transfer Agreements.

(1) The hospital shall maintain a written transfer agreement with one or more general acute hospitals to facilitate the placement of patients and transfer of essential patient information in case of medical emergency.

(2) Patients shall not be referred to another facility without prior contact with that facility.

R432-101-19. Pets in Hospitals.

(1) If a hospital chooses to allow pets in the facility, it shall develop a written policy in accordance with these rules and local ordinances.

(2) Household pets, such as dogs, cats, birds, fish, and hamsters, can be permitted only under the following conditions:

(a) pets must be clean and disease free;

(b) the immediate environment of pets must be kept clean;

(c) small pets such as birds and hamsters are kept in appropriate enclosures;

(d) pets not confined in enclosures must be hand held, under leash control, or under voice control;

(e) pets that are kept at the hospital or are frequent visitors shall have current vaccinations, including, but not limited to, rabies, as recommended by a designated licensed veterinarian.

(3) The hospital shall have written policies and procedures for pet care.

(a) The administrator or designee shall determine which pets may be brought into the hospital. Family members may bring a patient's pet to visit provided they have approval from the administrator and offer reasonable assurance that the pets are clean, disease free, and vaccinated as appropriate.

(b) Hospitals with birds shall have procedures which protect patients, staff, and visitors from psittacosis. Procedures should ensure minimum handling of droppings. Droppings shall be placed in a plastic bag for disposal.

(c) Hospitals with pets that are kept overnight shall have written policies and procedures for the care, feeding, and housing of such pets and for proper storage of pet food and supplies.

(4) Pets are not permitted in food preparation or storage areas. Pets shall not be permitted in any area where their presence would create a significant health or safety risk to others. Persons caring for any pets shall not have patient care or food handling responsibilities.

R432-101-20. Inpatient Services.

(1) Upon admission, a physician or qualified designee shall document the need for admission. A brief narrative of the patient's condition, including, the nurses admitting notes, temperature, pulse, respirations, blood pressure, and weight, shall be documented in the patient's record. The admission record shall be completed according to hospital policy.

(a) A physician or qualified designee shall make an assessment of each patient's physical health and a preliminary psychiatric assessment within 24 hours of admission. The history and physical exam shall include appropriate laboratory work-up, a determination of the type and extent of special examinations, tests, or evaluations needed, and when indicated, a thorough neurological exam.

(b) A psychiatrist or psychologist or qualified designee shall make an assessment of each patient's mental health within 24 hours of admission. A written emotional or behavioral assessment of each patient shall be entered in the patient's record.

(c) There shall be a written assessment of the patient's legal status to include but not be limited to:

(i) a history with information about competency, court commitment, prior criminal convictions, and any pending legal actions;

(ii) the urgency of the legal situation;

(iii) how the individual's legal situation may influence treatment.

(2) A written individual treatment plan shall be initiated for each patient upon admission and completed no later than 7 working days after admission. The individual treatment plan shall be based upon the information resulting from the assessment of patient needs, see R432-101-20(1).

(a) The individual treatment plan shall be part of the patient record and signed by the person responsible for the patient's care. Patient care shall be administered according to the individual treatment plan.

(b) Individual treatment plans must be reviewed on a weekly basis for the first three months, and thereafter at intervals determined by the treatment team but not to exceed every other month.

(c) The written individual treatment plan shall be based on a comprehensive functional assessment of each patient. When appropriate, the patient and family shall be invited to participate in the development and review of the individual treatment plan. Patient and family participation shall be documented.

(d) The individual treatment plan shall be available to all personnel who provide care for the patient.

(e) The Utah State Hospital is exempt from the R432-101-20(2) and R432-101-20(2)(b) time frames for initiating and reviewing the individual treatment plan. The Utah State Hospital shall initiate for each patient admitted an individual treatment plan within 14 days and shall review the plan on a monthly basis.

R432-101-21. Adolescent or Child Treatment Program.

(1) A hospital that admits adolescents or children for care and treatment shall have the organization, staff, and space to meet the specialized needs of this specific group of patients.

(a) Children shall be classified as age five to 12 and adolescents ages 13 - 18.

(b) If a child is considered for admission to an adolescent program, the facility shall assess and document that the child's developmental growth is appropriate for the adolescent program.

(c) Adolescent patients who reach their eighteenth birthday, the age of majority, may remain in the facility on the adolescent unit to complete the treatment program.

(2) A mental health professional with training in adolescent or child psychiatry, or adolescent or child psychology, as appropriate, shall be responsible for the treatment program.

(3) Adolescent or child nursing care shall be under the direction of a registered nurse qualified by training, experience, and ability to effectively direct the nursing staff. All nursing personnel shall have training in the special needs of adolescents or children.

(4) There must be educational provision for all patient's of school age who are in the hospital over one month.

(5) Adolescents may be admitted to an adult unit when specifically ordered by the attending member of the medical staff, but may not remain there more than three days unless the clinical director approves orders for the adolescent to remain on the adult unit.

(6) Specialized programs for children must be flexible enough to meet the needs of the children being served.

(a) There shall be a written statement of philosophy, purposes and program orientation including short and long term goals.

(b) The types of services provided and the characteristics of the child population being served shall also be included in the service's policy document. It shall be available to the public on request.

(c) There shall be a written description of the program's overall approach to family involvement in the care of the patient.

(d) There shall be a written policy regarding visiting and other forms of patient communication with family, friends

and significant others.

(e) There shall be a written plan of basic daily routines. It shall be available to all personnel and shall be revised as necessary.

(f) There shall be a written complaint process for children in clear and simple language that identifies an avenue to make a complaint without fear of retaliation.

(g) There shall be a comprehensive written guide of preventive, routine, and emergency medical care for all children in the program, including written policies and procedures on the use and administration of psychotropic and other medication.

(h) There shall be a complete health record for each child including:

(i) immunizations;

(ii) medications;

(iii) medical examination;

(iv) vision and dental examination, if indicated by the medical examination;

(v) a complete record of treatment for each specific illness or medical emergency.

(i) The use of emergency medication shall be specifically ordered by a physician or other person licensed to prescribe and be related to a documented medical need.

(j) In addition to the medical record requirements, the child's record shall contain:

(i) documents related to the referral of the child to the program;

(ii) documentation of the child's current parental custody status or legal guardianship status;

(iii) the child's court status, if applicable;

(iv) cumulative health records, where possible;

(v) education records and reports.

(k) The following standards apply to children's programs within a secure, locked treatment facility:

(i) There shall be a statement in the child's record identifying the specific security measures employed and demonstrating that these measures are necessary in order to provide appropriate services to the child.

(ii) There shall be evidence that the staff and the child are aware of the hospital's emergency procedures and the location of emergency exits.

(iii) If children are locked in their rooms during sleeping hours, there shall be a method to unlock the rooms simultaneously from a central point or upon activation of a fire alarm system.

(iv) There shall be a recreational program offering a wide variety of activities suited to the interests and abilities of the children in care.

R432-101-22. Residential Treatment Services.

(1) If offered, the residential treatment service shall be organized as a distinct part of the hospital service, either free-standing or as part of the licensed facility. Residential treatment services shall be under the direction of the medical director or designee.

(2) "Residential Treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider. Individuals are assisted in acquiring the social and behavioral skills necessary for living independently.

(3) The hospital administrator shall appoint a program manager responsible for the day-to-day operation and resident supervision.

(a) The program manager's responsibilities shall be clearly defined in the job description.

(b) Whenever the manager is absent, a substitute manager shall be appointed.

(4) Residential treatment staff shall have specialized training in the area of psychiatric treatment. Staff shall consist of:

(a) a licensed physician;

(b) a certified or licensed clinical social worker;

(c) a licensed psychologist;

(d) a licensed registered nurse; and

(e) unlicensed staff who are trained to work with psychiatric residents and who shall be supervised by a health care practitioner.

(5) Programs admitting children or adolescents shall ensure that their education is continued through grade 12.

(a) Curriculum shall be approved by the Utah Office of Education.

(b) Education services provided by the licensee must be accredited by the Utah State Board of Education or Board Northwest Association of School and Colleges.

(c) Teachers must be certified by the Utah State Board of Education. Certification in Special Education is required where clearly necessary to supervise or carry out educational curriculum.

(6) An individual treatment plan developed by an interdisciplinary team shall be initiated for each resident upon admission and a completed copy placed in the resident record within seven days.

(a) The treatment plan shall identify the resident's needs, as described by a comprehensive functional assessment.

(b) The resident, his responsible party (if available), and facility staff shall participate in the planning of treatment. The facility staff shall encourage the resident's attendance at interdisciplinary team meetings.

(c) The written treatment plan shall set forth goals and objectives stated in terms of desirable behavior that prescribes an integrated program of activities, therapies, and experiences necessary for the resident to reach the goals and objectives.

(7) The comprehensive functional assessment shall consider the resident's age and the implications for treatment. The assessment shall identify:

(a) the presenting problems and disabilities for admission and, where possible, their cause;

(b) specific individual strengths;

(c) special behavioral management needs;

(d) physical health status to include:

(i) a history and physical exam performed by a physician or nurse practitioner which includes appropriate laboratory work-up;

(ii) a determination of the type and extent of special examinations, tests or evaluations needed.

(e) alcohol and drug history;

(f) degree of psychological impairment and measures to be taken to relieve treatable diseases;

(g) the capacity for social interaction and habilitation and rehabilitation measures to be taken;

(h) the emotional or behavioral status based on an assessment of:

(i) a history of previous emotional or behavioral problems and treatment;

(ii) the resident's current level of emotional or behavioral functioning;

(iii) an evaluation by a psychiatrist, psychologist or qualified designee within 30-days prior to admission, or within 24 hours after admission.

(i) if indicated, psychological testing shall include intellectual and personality testing.

(8) The comprehensive assessment shall be amended to reflect any changes in the resident's condition.

(9) An individual treatment plan shall be implemented which provides services to improve the resident's condition which are offered in an environment that encompasses physical, interpersonal, cultural, therapeutic, rehabilitative,

and habilitative components.

(10) The resident shall be encouraged to participate in professionally developed and supervised activities, experiences or therapies in accordance with the individualized treatment plan.

(11) The provisions of R432-101-23. Physical Restraints, Seclusion, and Behavior Management shall apply.

R432-101-23. Physical Restraints, Seclusion, and Behavior Management.

(1) Physical restraints, including seclusion shall only be used to protect the patient from injury to himself or to others or to assist patients to attain and maintain optimum levels of physical and emotional functioning.

(2) Restraints shall not be used for the convenience of staff, for punishment or discipline, or as substitutes for direct patient care, activities, or other services.

(3) Each hospital shall develop written policies and procedures that will govern the use of physical restraints and seclusion. A major focus of these policies shall be to provide patient safety and ensure civil and patient rights.

(4) Policies shall incorporate and address at least the following:

(a) examples of the types of restraints and safety devices that are acceptable for use and possible patient conditions for which the restraint may be used;

(b) guidelines for periodic release and position change or exercise, with instructions for documentation of this action.

(5) Bed sheets or other linens shall not be used as restraints.

(6) Restraints shall not unduly hinder evacuation of the patient in the event of fire or other emergency.

(7) Physical restraints must be authorized by a member of the medical staff in writing every 24 hours. PRN orders for restraints are prohibited. If a physical restraint is used in behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(c).

(a) Use of restraints will be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process, and documented in the patient's record.

(b) Use of physical restraints, including simple safety devices, may be used only if a specific hazard or need for restraint is present. The physician order must indicate the type of physical restraint or safety device to be used and the length of time to be used. A facility restraint policy may be developed addressing the above items and accepted by reference in the patient care plan.

(c) Physical restraints must be applied by properly trained staff, to ensure a minimum of discomfort, allowing sufficient body movement to ensure that circulation will not be impaired. No restraint shall be used or applied in such a manner as to cause injury or the potential for injury.

(d) Staff shall monitor and assess a patient who is restrained. The restraint shall be released or the patient's position changed at least every two hours, unless written justification is provided for why such restraint release is dangerous to the patient or others.

(e) Physical restraints may be used in an emergency, if there is an obvious threat to life or immediate safety, as follows:

(i) Verbal orders may be given by the physician to a licensed nurse by telephone.

(ii) A licensed health care professional, identified by policy, may initiate the use of a restraint; however, verbal or written approval from the physician must be obtained within one hour.

(iii) A verbal order must be signed by a physician within 24 hours.

(iv) Staff members shall document in the patient's record the circumstances necessitating emergency use of the restraint and the patient's response.

(8) Seclusion must be used in accordance with hospital policy and authorized by a member of the medical staff.

(a) If seclusion is used for behavior management, there must be an individualized behavior management program and an ongoing monitoring system to assure effectiveness of the treatment, see Subsection R432-101-4(2)(e).

(b) Use of seclusion shall be reviewed routinely in the patient care conference, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process. The patient shall be monitored for adverse effects. The evaluations and reviews shall be part of the patient record.

(9) Time out shall be used in accordance with hospital policy, but does not have to be authorized by a member of the medical staff for each use.

The use of time out shall be included in the patient care plan and documented in the patient record.

(10) Hospital policy must establish criteria for admission and retention of patients who require behavior management programs, and shall specify the data to be collected and the location of these data in the clinical record.

(a) The program must be developed by the interdisciplinary team. There must be an opportunity for involvement of the patient, next of kin or designated representative.

(b) A behavior management program must be approved for a patient by the team leader, as described by hospital policy.

(c) Behavior management programs must employ the least restrictive methods to produce the desired outcomes and incorporate a process to identify and reinforce desirable behavior. Consent for use of any behavior management program that employs aversive stimuli must be obtained from the patient, next of kin, or designated representative.

(d) The behavior management program shall be incorporated into the patient care plan.

(e) The behavior management program shall be reviewed routinely by the interdisciplinary team as the patient care conference is conducted, as the order is renewed by the member of the medical staff, and on a day-to-day basis as care is delivered. This shall be considered an ongoing process.

(f) Documentation in the patient's record shall include:

(g) a behavior baseline profile, including a description of the undesirable behavior, as well as a statement whether there is a known history of previous undesirable behaviors and prior treatment;

(i) conditions under which the behavior occurs;

(ii) interventions used and their results;

(iii) a behavior management program including specific measurable behavioral objectives, time frames, names, titles, and signature of the person responsible for conducting the program, and monitoring and evaluation methods;

(iv) summaries and dates of the evaluations and reviews by the interdisciplinary team.

R432-101-24. Involuntary Medication Administration.

(1) The facility shall adopt and implement a policy and procedure for patients who refuse a prescribed medication. The policy shall include the following:

(a) the facility staff shall document the refusal of medications in the individual care plan; and

(b) the interdisciplinary team shall review and assess the patient's refusal of medication, ensuring that the patient's

rights are protected.

(2) If the interdisciplinary team determines that the patient requires medication, as part of a behavior management program, or for emergency patient management, or for clinical treatment, and a physician or licensed practitioner orders the medication, then the facility staff shall document the physician's order in the individual treatment plan and administer the medication.

(3) If a patient is administered involuntary medications, the facility staff shall review the administration of medications in a patient care conference, each time the physician renews the medication order, and on a day-to-day basis as care is delivered.

(4) The facility staff shall evaluate and assess the patient for adverse side effects. The facility staff shall document the evaluation and assessment in the patient record.

R432-101-25. Outpatient Emergency Psychiatric Services.

(1) If the hospital offers outpatient emergency psychiatric services, the service shall be organized as a service specifically designated for this purpose and under the direction of the medical director or designee.

(a) Services shall be available 24 hours a day to persons presenting themselves for assistance.

(b) If the hospital chooses not to offer emergency outpatient psychiatric services, it shall have a written plan for referral of persons making inquiry regarding such services or presenting themselves for assistance.

(2) The outpatient service shall be supported by policies and procedures including admission, and treatment procedures, and medical and psychiatric reference materials.

(3) Involuntary detention of a person must be according to applicable hospital policy and Utah Law.

R432-101-26. Emergency Services.

(1) Each facility shall provide physician and registered nurse coverage 24 hours per day. Nursing and other allied health professional staff shall be readily available in the hospital. Staff may have collateral duties elsewhere in the hospital, but must be able to respond when needed without adversely affecting patient care or treatment elsewhere in the hospital.

(2) The facility shall have trained staff to triage emergency care for each patient, staff and visitor, to stabilize the presenting condition, and transfer to an appropriately licensed facility.

(3) The facility must have an emergency area which includes a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication hookup and access to a poison control center.

(4) If the hospital offers additional or expanded emergency services, the service must comply with the provisions of the appropriate sections of R432-100-17.

(5) The hospital shall have protocols for contacting local emergency medical services.

R432-101-27. Clinical Services.

(1) If the following services are used, R432-100 shall apply:

(a) Surgical Services, R432-100-15.

(b) Critical Care Unit, R432-100-14.

(c) Inpatient Hospice, R432-750.

(2) If chemical dependency or substance abuse services are provided, the R432-102 Specialty Hospital - Chemical Dependency/Substance Abuse Rules apply.

R432-101-28. Laboratory.

(1) Each specialty hospital must have a CLIA certificate. If an outside lab is contracted for providing services, the outside lab shall have a CLIA certificate.

(2) If outside laboratory services are secured through contract, the hospital must maintain an in-house ability to collect, preserve and arrange for delivery to the outside laboratory for testing. If additional laboratory services are provided, the hospital must comply with the appropriate sections of R432-100-23.

R432-101-29. Pharmacy.

(1) Each specialty hospital must have the ability to provide in house certain basic services, such as storage, dispensing, and administration of medication.

(2) All pharmacy services must comply with the appropriate sections of R432-100-25.

(3) The facility must have a policy approved by the board and the medical staff on the use of investigational drugs.

R432-101-30. Social Services.

(1) The facility shall provide social services to assist staff, patients, and patients' families to understand and cope with a patient's social, emotional, and related health problems.

(a) Social services shall be under the direction of a licensed clinical social worker. The role and function of social services shall be listed in policy documents and meet generally accepted practices of Mental Health Professional Practice Act.

(b) Social services personnel shall serve as a patient advocate to:

(i) provide services to maximize each patient's ability to adjust to the social and emotional aspects of his situation, treatments, and continued stay in the hospital;

(ii) participate in ongoing discharge planning to assure continuity of care for the patient;

(iii) initiate referrals to official agencies when the patient needs legal or financial assistance;

(iv) maintain appropriate liaison with the family or other responsible persons concerning the patient's placement and rights;

(v) preserve the dignity and rights of each patient.

(2) Each hospital shall develop social services policies and procedures which include at least the following:

(a) a system to identify, plan, and provide services according to the social and emotional needs of patients;

(b) job descriptions, including title and qualifications of all persons who provide social services;

(c) a method to refer patients to outside social services agencies when the hospital is unable to resolve a patient's problems.

(3) The Social Service director shall participate in any pertinent quality assurance activities of the hospital.

R432-101-31. Activity Therapy.

(1) The hospital shall provide activity therapy services to meet the physical, social, cultural, recreational, health maintenance and rehabilitational needs of patients as defined in the patient care plan.

(a) The activity therapy service shall have policies that describe the organization of the service and provision for services to the patient population.

(i) Program goals and objectives shall be stated in writing.

(ii) Appropriate activities shall be provided to patients during the day, in the evening, and on the weekend.

(iii) Patient participation in planning shall be sought, whenever possible.

(iv) Activity schedules shall be posted in places

accessible to patients and staff.

(b) Activity therapy shall be incorporated into the patient care plan.

(c) Patients shall be permitted leisure time and encouraged to use it in a way that fulfills their cultural and recreational interests and their feelings of human dignity.

(2) The activity therapy service shall be supervised by an individual.

(3) The facility shall provide sufficient space, equipment, and facilities to meet the needs of the patients. Space, equipment, and facilities shall meet federal, state and local requirements for safety, fire prevention, health, and sanitation.

R432-101-32. Other Services.

If the following services are provided, R432-100 shall apply:

(a) Anesthesia Services, R432-100-16.

(b) Rehabilitation Therapy Services, R432-100-21.

(c) Radiology, R432-100-22.

(d) Respiratory Care Services, R432-100-20.

R432-101-33. Medical Records.

(1) The hospital shall comply with the provisions of R432-100-34.

(2) Contents of the patient record shall describe a patient's physical, social and mental health status at the time of admission, the services provided, the progress made, and a patient's physical, social and mental health status at the time of discharge.

(a) The patient record identification data recorded on standardized forms shall include the patient's name, home address, date of birth, sex, next of kin, marital status, and date of admission.

(b) The patient record shall include:

(i) involuntary commitment status, including relevant legal documents;

(ii) date the information was gathered, and names and signatures of the staff members gathering the information.

(c) The patient record shall contain pertinent information on the course of treatment to include:

(i) signed orders by physicians and other authorized practitioners for medications and treatments;

(ii) relevant physical examination, medical history, and physical and mental diagnoses using a recognized diagnostic coding system;

(iii) information on any unusual occurrences, such as treatment complications, accidents, or injuries to or inflicted by the patient, and procedures that place the patient at risk;

(iv) documentation of patient and family involvement in the treatment program;

(v) progress notes written by the psychiatrist, psychologist, social worker, nurse, and others significantly involved in active treatment;

(vi) temperature, pulse, respirations, blood pressure, height, and weight notations, when indicated;

(vii) reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(viii) correspondence with signed and dated notations of telephone calls concerning the patient's treatment;

(ix) a written plan for discharge including an assessment of patient needs;

(x) documentation of any instance in which the patient was absent from the hospital without permission;

(xi) the patient care plan.

(d) There shall be a discharge summary signed by the attending member of the medical staff and entered into the patient record within 30 calendar days from the date of discharge. In the event a patient dies, the discharge statement shall include a summary of events leading to the death.

(e) The patient record shall contain evidence of informed consent or the reason it is unattainable.

(f) The patient record shall contain consent for release of information, the actual date the information was released, and the signature of the staff member who released the information. The patient shall be informed of the release of information as soon as possible.

(g) The hospital may release pertinent information to personnel responsible for the individual's care without the patient's consent under the following circumstances:

(i) in a life-threatening situation;

(ii) when an individual's condition or situation precludes obtaining written consent for release of information;

(iii) when obtaining written consent for release of information would cause an excessive delay in delivering essential treatment to the individual.

R432-101-34. Ancillary Services.

If the following services are used, R432-100 shall apply:

(1) Central Supply, R432-100-35.

(2) Dietary, R432-100-32.

(3) Laundry, R432-100-36.

(4) Maintenance Services, R432-100-38.

(5) Housekeeping, R432-100-37.

R432-101-35. Partial Hospitalization Services.

(1) If the hospital offers a partial hospitalization program, the following services may be included:

(a) crisis stabilization or the provision of intensive, short-term daily programming which averts psychiatric hospitalization or offers transitional treatment back into community life in order to shorten an episode of acute inpatient care; and

(b) intermediate term treatment which provides more extended, daily, goal directed clinical services for a population at high risk for hospitalization or readmission due to the serious or persistent nature of their psychiatric, emotional behavioral, or addictive disorder.

(2) If the specialty hospital offers partial hospitalization services, the hospital shall establish policies and procedures to address the following:

(a) Criteria for admission indicating a DSM IV Mental or Nervous condition;

(b) Assessment;

(c) Treatment Planning;

(d) Active treatment;

(e) Coordination of Care; and

(f) Discharge criteria.

R432-101-36. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

April 11, 2011	**26-21-2.1**
Notice of Continuation November 5, 2015	**26-21-5**
	26-21-6
	26-21-20

R432. Health, Family Health and Preparedness, Licensing.
R432-104. Specialty Hospital - Long-Term Acute Care.
R432-104-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-104-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of program standards for the operation of long-term acute care (LTAC) hospitals.

R432-104-3. License.

(1) To be licensed as an LTAC hospital, the facility shall:

(a) Have a duly constituted governing body with overall administrative and professional responsibility;

(b) Have an organized medical staff which provides 24-hour inpatient care;

(c) Have a chief executive officer to whom the governing body delegates the responsibility for the operation of the hospital;

(d) Maintain at least one nursing unit containing patient rooms, patient care spaces, and service spaces defined in construction rules R432-10-4;

(e) Each nursing unit shall contain at least six patient beds;

(f) Rooms and spaces comprising each nursing unit shall be organized in a contiguous arrangement.

(g) Maintain current and complete medical records.

(h) Provide continuous registered nurse supervision and other nursing services;

(i) Provide in house the following basic services:

(i) Pharmacy;

(ii) Laboratory;

(iii) Nursing services;

(iv) Occupational, Physical, Respiratory and Speech therapies;

(v) Dietary;

(vi) Social Services; and

(vii) Specialized Diagnosis and therapeutic services.

(2) The LTAC hospital shall provide on site all basic service required of a general hospitals that are needed for the diagnosis, therapy, and treatment offered or required by all patients admitted to the hospital.

R432-104-4. General Design Requirements.

(1) See R432-10, Long-Term Acute Care Hospital Construction Rules.

(2) The LTAC hospital may be located within an existing licensed health care facility or be freestanding.

R432-104-5. Hospital located within an Acute Care Hospital.

(1) If an LTAC is located within a licensed acute care hospital, it must:

(a) have a separate governing body, chief executive officer, chief medical officer, and medical staff from the co-located hospital;

(b) perform basic functions independently from the host hospital;

(c) incur not more than 15 per cent of its total inpatient operating costs for items and services supplied by the host hospital;

(d) admit 75 per cent of patients from other sources than the host hospital;

(e) maintain admission and discharge records separately from those of the hospital in which it is co-located;

(f) not commingle beds with beds in which it is located; and

(g) be serviced by the same Medicare fiscal intermediary as the hospital of which it is a part.

R432-104-6. Organization and Staff.

(1) The following services and policies shall comply with R432-100.

(a) Governing Body, R432-100-5.

(b) Administrator, R432-100-6.

(c) Medical and Professional Staff, R432-100-7.

(d) Nursing Care Services, R432-100-12.

(e) Personnel Management Services, R432-100-8.

(f) Infection Control, R432-100-10.

(g) Quality Improvement Plan, R432-100-9.

(h) Patient Rights, R432-100-11.

R432-104-7. Admission and Discharge Policy.

(1) An LTAC shall implement as an admission policy an average inpatient length of stay greater than 25 days and which complies with R432-104-7(2).

(2) Patients who have one or more of the following conditions may be admitted to an LTAC:

(a) the patient is medically unstable due to chronic or long-term illness and requires a weekly physician visit; or

(b) the patient requires dangerous drug therapy, continuous use of a respirator or ventilator, or suctioning or nasopharyngeal aspiration at least once per nursing shift.

(c) the patient requires skilled nursing services and care which requires a registered nurse present for care 24 hours per day for at least three of the following treatments at the specified frequency;

(i) extensive dressings for deep decubiti, surgical wounds, or vascular ulcers daily;

(ii) isolation for infectious disease 24 hours per day;

(iii) suctioning three days per week;

(iv) occupational therapy, physical therapy, or speech therapy five days a week;

(v) respiratory therapy;

(vi) special ostomy care daily;

(vii) oxygen daily;

(viii) traction; or

(ix) catheter or wound irrigation daily.

(3) Within 24 hours of admission the attending physician shall document:

(i) The patient's current medical and respiratory status, including pertinent clinical parameters;

(ii) Treatment plan and goals;

(iii) Estimated length of stay; and

(iv) Anticipated discharge plan.

(4) The LTAC shall discharge the patient from the facility if:

(a) the physician documents that the patient:

(i) requires additional intense services in an acute hospital;

(ii) exhibits no evidence of progress towards current, documented goals over an eight-week period and a medically appropriate alternative for discharge exists; or

(iii) has met documented goals established at or modified following admission and medically appropriate alternatives for discharge exist; or

(b) the patient or care giver exhibit ability to care for the patient's physical needs.

R432-104-8. Clinical Services.

(1) The following services shall be provided in-house and comply with R432-100.

(a) Pharmacy Service, R432-100-25.

(b) Laboratory Service, R432-100-23.

(c) Rehabilitation Therapy Services, R432-100-21.

(d) Dietary Service, R432-100-32.
(e) Social Services, R432-100-26.
(2) Occupational Therapy Services shall be available for all patients who require the service.
(a) The occupational therapy services shall be directed by a licensed occupational therapist who shall have administrative responsibility for the occupational therapy department.
(b) Staff occupational therapists shall be licensed by the Utah Department of Commerce Title 58, Chapter 42.
(i) If Occupational Therapy Assistants are employed to provide patient services they shall be supervised by a licensed therapist.
(ii) Patient services shall be commensurate with each person's documented training and experience.
(c) Occupational Therapy services shall be initiated by an order from the medical staff.
(d) Written policies and procedures shall be developed and approved in conjunction with the medical staff to include:
(i) Methods of referral for services;
(ii) Scope of services to be provided;
(iii) Responsibilities of professional therapists;
(iv) Admission and discharge criteria for treatment;
(v) infection control;
(vi) safety;
(vii) individual treatment plans, objectives, clinical documentation and assessment;
(viii) incident reporting system; and
(ix) emergency procedures.
(e) Equipment shall be calibrated to manufacturer's specifications.
(f) There shall be a written individual treatment plan for each patient appropriate to the diagnoses and condition.
(g) The Occupational Therapy department shall organize and participate in continuing education programs.
(3) Speech Therapy services shall be available for all patients who require the service.
(a) The Speech-Pathology language services shall be directed by a licensed Speech-Pathologist or Audiologist who shall have administrative responsibility for the Speech-Audiology therapy department.
(b) Staff speech therapist and audiologist shall be licensed the Utah Department of Commerce, see Title 58, Chapter 41.
(i) If Speech-language pathology aides or audiology aides are employed to provide patient services they shall be supervised by a licensed therapist.
(ii) Patient services shall be commensurate with each person's documented training and experience.
(c) Speech and Audiology services shall be initiated by an order from the medical staff.
(d) Written policies and procedures shall be developed and approved in conjunction with the medical staff to include:
(i) Methods of referral for services;
(ii) Scope of services to be provided;
(iii) Responsibilities of professional therapists;
(iv) Admission and discharge criteria for treatment;
(v) Infection control;
(vi) Assistive Technology;
(vii) Individual treatment plans, objectives, clinical documentation and assessment;
(viii) Incident reporting system; and
(ix) Emergency procedures.
(e) Equipment shall be calibrated to manufacturer's specifications.
(f) There shall be a written individual treatment plan for each patient appropriate to the diagnoses and condition.
(g) The Department shall organize and participate in continuing education programs.
(4) Respiratory Care Services shall comply with R432-100-19.

R432-104-9. Emergency Services.
(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, and visitors and to persons who may be unaware of or unable to immediately reach services in other facilities.
(2) Provisions for services shall include:
(a) Treatment room;
(b) Storage for supplies;
(c) reception area and control of walk-in traffic;
(d) Patient toilet room;
(e) Telephone service in order to call the poison control center;
(f) Staff available in the facility to respond in case of an emergency.
(3) Each hospital shall have available an automated external defibrillator unit and at least one staff on duty who is competent on its use.

R432-104-10. Complementary Services.
(1) If the following services are provided in-house, they shall comply with R432-100.
(a) Radiology Services, R432-100-22.
(b) Outpatient Services, R432-100-29.
(c) Pediatric Services, R432-100-19.
(d) Surgical Services, R432-100-15.

R432-104-11. Ancillary Services.
(1) The following services shall be provided in-house and shall comply with R432-100.
(a) Central Supply, R432-100-35.
(b) Laundry, R432-100-36.
(c) Medical Records, R432-100-34.
(d) Maintenance, R432-100-38.
(e) Housekeeping, R432-100-37.
(f) Emergency and Disaster Plans, R432-100-39.

R432-104-12. Penalties.
Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities
August 3, 2016 26-21-5
Notice of Continuation November 9, 2015 26-21-2.1
26-21-20

R432. Health, Family Health and Preparedness, Licensing.
R432-550. Birthing Centers.
R432-550-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-550-2. Purpose.

This rule provides health and safety standards for the organization, physical plant, maintenance and operation of birthing centers.

(1) Birthing centers shall consist of one to five birth rooms. Licensure is not required for birthing centers with only one birth room.

(2) Birthing centers provide quality care and services in a pleasing and safe environment to a select low risk population of healthy maternal patients who choose a safe and cost-effective alternative to the traditional hospital childbirth experience.

(3) Birthing center clinical staff assess the maternal patient's risk for obstetric complications through careful review of the patient's records for prenatal screening of potential problems.

(4) Birthing centers recognize the individual needs of, and provide service to, low risk maternal patients expected to have an uncomplicated labor and delivery.

R432-550-3. Time for Compliance.

Facilities governed by these rules shall be in full compliance with these rules at the time of licensure.

R432-550-4. Definitions.

(1) Common definitions R432-1-3.

(2) Special Definitions:

(a) "Birth room" means a room and environment designed, equipped and arranged to provide for the care of a maternal patient and newborn and to accommodate a maternal patient's support person during the process of vaginal birth and recovery. "Birth room" does not include rooms intended for pre-admittance or post-discharge accommodations of maternal patients and their newborns.

(b) "Birthing center" means a freestanding facility, receiving maternal patients and providing care during labor, delivery and immediately after delivery.

(c) "Patient" means a woman or newborn receiving care and services provided by a birthing center during labor, childbirth and recovery.

(d) "Clinical staff" means a licensed maternity care practitioner appointed by the governing authority to practice within the birthing center and governed by rules approved by the governing body.

(e) "Support person" means the individual or individuals selected or chosen by a patient to provide emotional support and to assist her during the process of labor and childbirth.

(f) "Vaginal birth" means the three stages of labor.

(g) "Licensed maternity care practitioner" means a person licensed to provide maternity care services including physicians licensed under Title 58, Chapters 67 and 68, Certified Nurse-Midwives licensed under Title 58, Chapter 44a, Naturopathic Physicians licensed under Title 58, Chapter 71, Licensed Direct-Entry Midwives licensed under Title 58, chapter 77, and others licensed to provide maternity, midwifery, or obstetric care under Title 58.

R432-550-5. General Construction Rules.

See R432-14 Birthing Center Construction Rules.

R432-550-6. Governing Body.

(1) The licensee shall appoint in writing an individual or group to constitute the facility's governing body. The governing body shall:

(a) comply with federal, state and local laws, rules and regulations;

(b) adopt written policies and procedures which describe the functions and services of the birthing center and protect patient rights;

(c) adopt a policy prohibiting discrimination because of race, color, sex, religion, ancestry, or national origin in accordance with Title 13, Chapter 7, Sections 1 through 4.

(d) develop an organizational structure establishing lines of authority and responsibility;

(e) when the governing body is more than one individual, conduct meetings in accordance with facility policy, but at least annually, and maintain written minutes of the meetings;

(f) appoint by name and in writing a qualified administrator;

(g) appoint by name and in writing a qualified director of the clinical staff;

(h) appoint members of the clinical staff and delineate their clinical privileges;

(i) review and approve at least annually a quality assurance program for birthing center operation and patient care provided.

(j) establish a system for financial management and accountability;

(k) provide for resources and equipment to provide a safe working environment for personnel;

(l) act on findings and recommendations of facility-created committees relevant to compliance with these birthing center rules;

(m) ensure that facility patient admission eligibility criteria are strictly applied by clinical staff and are evaluated through quality assurance review in accordance with R432-550-11.

(2) Written policies and procedures shall:

(a) clearly, accurately and comprehensively define the methods by which the facility will be operated to protect the health and safety of patients;

(b) provide for meeting the patient's needs;

(c) provide for continuous compliance with federal, state and local laws, rules and regulations.

(d) Written policies and procedures shall include:

(i) defining the term "low risk maternal patient" which shall include eligibility criteria for birth services offered in the birthing center;

(ii) defining specific criteria, which shall in normally anticipated circumstances render a maternal patient ineligible for birth services or continued care at the birthing center;

(iii) identifying and outlining methods for transferring patients who, during the course of labor or recovery, are determined to be ineligible for birthing center services or continued care at the birthing center, including;

(A) information required for proper care and treatment of the individual(s) transferred, including patient records; and

(B) security and accountability of the personal effects of the individual being transferred.

(iv) planning for consultation, back-up services, transfer and transport of a newborn and maternal patient to a hospital where necessary care is available;

(v) documenting the maternal patient has been informed of the eligibility requirements of an out-of-hospital birthing center labor and birth;

(vi) providing instructions in postpartum and newborn care to the patient and any other family or support person designated by the patient;

(vii) registering birth, fetal death or death certificates in accordance with Title 26, Chapter 2, Sections 5, 13, 14, 23 and rules promulgated pursuant thereto in R436.

(viii) prescribing and instilling a prophylactic solution approved by the Department of Health in the eyes of the newborn in accordance with R386-702-8, Special Measures for the Control of Ophthalmia Neonatorum;

(ix) performing phenylketonuria (PKU) and other disease tests in accordance with Department of Health Laboratory rules developed pursuant to Section 6;

(x) verifying prenatal laboratory screening to include:

(A) blood type and Rh Factor and provision for appropriate use of Rh immunoglobulin;

(B) hematocrit or hemoglobin;

(C) antibody screen;

(D) rubella; and

(E) syphilis;

(xi) providing for infection control to include:

(A) housekeeping;

(B) cleaning, sterilization, sanitization and storage of supplies and equipment; and

(C) prevention of transmission of infection in personnel, patients and visitors.

R432-550-7. Administrator.

(1) Direction.

(a) The administrator shall be responsible for the overall management and operation of the birthing center.

(b) The administrator shall designate in writing a competent employee to act as administrator in the temporary absence of the administrator.

(c) The administrator's designee shall have authority and responsibility to:

(i) act in the best interests of patient safety and well-being;

(ii) operate the facility in a manner which ensures compliance with these birthing center rules.

(2) Qualifications.

The administrator and administrator's designee shall be knowledgeable:

(a) by education, training or experience in administration and supervision of personnel and qualified as required by facility policy;

(b) in birthing center protocols;

(c) in applicable federal, state and local laws, rules and regulations.

(3) The administrator's responsibilities shall be included in a written job description available for Department review. The administrator shall:

(a) complete, submit and file records and reports required by the Department;

(b) develop and implement facility policies and procedures;

(c) review facility policies and procedures at least annually and report to the governing body on the review;

(d) employ or contract with competent personnel whose qualifications are commensurate with job responsibilities and authority and who have the appropriate Utah license or certificate of completion;

(e) develop, for all employee positions, job descriptions that delineate functional responsibilities and authority; and

(f) review and act on incident or accident reports.

R432-550-8. Clinical Director.

(1) The clinical director shall be responsible for implementing, coordinating and assuring the quality of patient care services.

(2) The clinical director shall:

(a) be currently licensed to practice medicine or midwifery in Utah;

(b) have training and expertise in obstetric and newborn services offered to ensure adequate supervision of patient care services.

(3) The clinical director's responsibilities shall be included in a written job description available for Department review. The clinical director shall:

(a) review and update facility protocols;

(b) review and evaluate clinical staff privileges and revise them as necessary;

(c) recommend, to the governing body, names of qualified licensed health care practitioners to perform approved procedures and the corresponding clinical staff privileges to be granted;

(d) coordinate, direct and evaluate clinical operations of the facility;

(e) evaluate and recommend to the administrator the type and amount of equipment needed in the facility;

(f) ensure that qualified staff are on the premises while patients are admitted to the facility;

(g) ensure clinical staff documentation is recorded immediately and reflects a description of care given;

(h) ensure that planned birthing center services are within the scope of privileges granted to the clinical staff; and

(i) recommend to the administrator appropriate remedial action and disciplinary action, when necessary, to correct violations of clinical protocols.

R432-550-9. Personnel.

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

(a) content of personnel records;

(b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;

(c) conditions of employment; and

(d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(5) An employee placement health evaluation shall include at a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

(a) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(8) The birthing center personnel must receive documented orientation to the facility and the job for which they are hired.

(9) The birthing center personnel must receive documented ongoing in-service training to include:

(a) an annual review of facility policies and procedures; and

(b) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(10) The birthing center Personnel shall have access to the facility's policy and procedure manuals when on duty.

(11) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

R432-550-10. Contracts.

(1) The licensee shall provide a written contract for any birthing center services that are not provided directly by the facility. The licensee shall ensure that the contracted entity:

(a) performs according to facility policies and procedures;

(b) conforms to standards required by laws, rules and regulations;

(c) provides services that meet professional standards and are timely.

(2) Contracts shall be available for Department review.

R432-550-11. Quality Assurance.

(1) The administrator shall establish a quality assurance committee and program. This committee shall review regularly clinic operations, protocols, policies and procedures, incident reports, infection control, patient care policies and safety.

(2) The quality assurance committee shall initiate action to resolve identified quality assurance problems by filing a written report of findings and recommendations with the licensee.

(3) The quality assurance committee shall meet as prescribed in facility policy or at least quarterly and shall keep written minutes available for department review.

(4) The quality assurance program shall include surveillance, prevention and control of infection.

R432-550-12. Emergency and Disaster.

(1) The facility shall assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include but is not limited to interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101, Life Safety Code.

(3) The administrator shall be responsible for the development of an emergency and disaster plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters as appropriate. The plan shall:

(a) be in writing and personnel shall have ready access when on duty;

(b) be reviewed and updated at least annually by the administrator and the licensee; and

(c) address evacuation of occupants to a safe place within the facility or to another location.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) The facility shall have, and be capable of implementing contingency plans regarding excessively high or low ambient air temperatures within the facility that may affect the health and safety of the patients.

R432-550-13. Patients' Rights.

(1) Written patients' rights shall be established and made available to the patient as determined by facility policy which shall include the following:

(a) to be fully informed, prior to or at the time of admission, and during stay, of these rights and of facility rules that pertain to the patient;

(b) to be fully informed, prior to admission, of the treatment to be received, potential complications and expected outcomes;

(c) to refuse treatment to the extent permitted by law and to be informed of the medical consequences of such refusal;

(d) to be informed, prior to or at the time of admission and during stay, of services available in the facility and of any expected charges for which the patient may be liable;

(e) to be afforded the opportunity to participate in decisions involving personal health care, except when contraindicated;

(f) to refuse to participate in experimental research;

(g) to be ensured confidential treatment of personal and medical records and to approve or refuse release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(h) to be treated with consideration, respect and full recognition of personal dignity and individuality, including privacy in treatment and in care for personal needs.

R432-550-14. Clinical Staff and Personnel.

(1) Information identifying current clinical staff and on-call and emergency telephone numbers shall be readily available to birthing center personnel.

(2) Clinical staff and licensed personnel of the birthing center shall be trained in emergency and resuscitation measures for infants and adults, including but not limited to, cardiopulmonary resuscitation certification through an American Heart Association or American Red Cross approved course.

(3) A licensed maternity care practitioner shall be present at each birth and remain until the maternal patient and newborn are stable postpartum.

(4) A second member of the birthing center staff who is licensed or certified to give cardiopulmonary resuscitation shall be present at each birth.

(5) Clinical staff, licensed personnel and support staff shall be provided to meet patients' needs, to ensure patients' safety and to ensure that patients in active labor are attended.

R432-550-15. Clinical Staff.

(1) The attending member of the clinical staff shall ensure the supervision of, and quality of, care delivered to the patient admitted to the facility.

(2) Each patient shall be under the care of a member of the clinical staff.

(3) Clinical staff members shall comply with applicable professional practice laws and written birthing center protocols approved by the clinical director.

(4) The attending member of the clinical staff shall verify in writing that the patient conforms to facility eligibility criteria.

(5) The attending member of the clinical staff shall decide when transfer of a patient to a hospital is necessary and document in writing the conditions warranting the decision.

R432-550-16. Equipment and Supplies.

(1) The administrator shall provide necessary equipment in good working order to meet the patient's needs.

(2) The type and amount of equipment shall be indicated in facility policy and approved by the clinical director.

(3) An emergency cart or tray equipped to allow completion of emergency procedures defined by facility policy shall be readily available.

(a) The facility shall safely store the emergency cart or tray in a designated area that is accessible to authorized personnel.

(b) The facility shall maintain a written log of all upkeep of the emergency cart or tray.

(4) The inventory of supplies shall be sufficient to care for the number of patients registered for care.

(5) Properly maintained equipment and supplies for the maternal patient and the newborn shall include at least the following:

(a) furnishings suitable for labor, birth and recovery;

(b) oxygen with flow meters and masks or equivalent;

(c) bulb suction;

(d) resuscitation equipment to include resuscitation bags, laryngeal mask airways and oral airways;

(e) firm surfaces suitable for use in resuscitating patients;

(f) emergency medications and related supplies and equipment;

(g) fetal monitoring equipment, minimally to include a fetoscope or doppler;

(h) equipment to monitor and maintain the optimum body temperature of the newborn;

(i) a clock indicating hours, minutes and seconds;

(j) sterile suturing equipment and supplies;

(k) adjustable examination light;

(l) infant scale;

(m) a telephone or equivalent two-way communication device capable of reaching other facilities or emergency agencies; and

(n) a delivery log for recording birth data.

R432-550-17. Medications.

(1) Licensed personnel shall prescribe, order and administer medication in accordance with applicable professional practice acts, pharmacy and controlled substances laws.

R432-550-18. Anesthesia Services.

(1) The birthing center shall provide facilities and equipment for the provision of anesthesia services commensurate with the obstetric procedures planned for the facility.

(2) The clinical director shall ensure the safety of anesthesia services administered to patients by clinical staff through written policies and protocols approved by the clinical staff for anesthetic agents, delivery of anesthesia and potential hazards of anesthesia.

(3) A clinical staff member shall monitor patients who receive anesthesia or analgesics.

R432-550-19. Laboratory Services.

(1) The birthing center shall provide direct or contract laboratory and associated services according to facility policy and to meet the needs of patients.

(2) Laboratory reports or results shall be reported promptly to the attending clinical staff member and documented in the patient's medical record.

(3) Laboratory services shall be provided according to CLIA requirements.

R432-550-20. Medical Records.

(1) Medical records shall be complete, accurately documented and systematically organized to facilitate retrieval and compilation of information.

(2) An employee designated by the administrator shall be responsible and accountable for the processing of medical records.

(3) The medical record and its contents shall be safeguarded from loss, defacement, tampering, fires and floods.

(4) Medical records shall be protected against access by unauthorized individuals.

(a) Medical record information shall be confidential.

(b) The birthing center may disclose medical record information only to authorized persons in accordance with federal, state and local laws.

(c) The birthing center shall obtain consent from the patient before releasing client information identifying the client, including photographs, unless release is otherwise allowed or required by law.

(5) Medical records shall be retained for at least five years after the last date of patient care. Records of minors, including records of newborn infants, shall be retained for three years after the minor reaches legal age under Utah law, but in no case less than five years.

(6) The birthing center shall maintain an individual medical record for each patient which shall include but is not limited to written documentation of the following:

(a) admission record with demographic information and patient identification data;

(b) history and physical examination which shall be up-to-date upon the patient's admission;

(c) written and signed informed consent;

(d) orders by a clinical staff member;

(e) record of assessments, plan of care and services provided;

(f) record of medications and treatments administered;

(g) laboratory and radiology reports;

(h) discharge summary for mother and newborn to include a note of condition, instructions given and referral as appropriate;

(i) prenatal care record containing at least prenatal blood serology, Rh factor determination, past obstetrical history and physical examination and documentation of fetal status;

(j) monitoring of progress in labor with assessment of maternal and newborn reaction to the process of labor;

(k) fetal monitoring record;

(l) labor and delivery record, including type of delivery, record of anesthesia and operative procedures if any; and

(m) documentation that the patient is informed of the statement of patient rights.

(7) The records of newborn infants shall include the following:

(a) date and hour of birth, birth weight and length, period of gestation, gender and condition of infant on delivery including Apgar scores and resuscitative measures;

(b) mother's name or unique identification;

(c) record of ophthalmic prophylaxis; and

(d) the identification number of the screening kit used to screen for metabolic diseases, documentation that metabolic screening, genetic screening, PKU or other metabolic

disorders reports were completed or refused by the client.

R432-550-21. Housekeeping Services.

(1) The facility shall provide adequate housekeeping services to maintain a clean and sanitary environment.

(2) The facility shall develop and implement written housekeeping policies and procedures.

R432-550-22. Laundry Services.

(1) The facility shall develop and implement written policies and procedures for storage and processing of clean and soiled linen.

(2) Clean linen shall be stored, handled and transported to prevent contamination. Linens shall be maintained in good repair.

(3) Soiled linen shall be handled, transported, stored and processed in a manner to prevent both leakage and the spread of infection.

R432-550-23. Maintenance, Physical Environment, and Safety.

(1) The facility shall provide adequate maintenance service to ensure that facility equipment and grounds are maintained in a clean and sanitary condition and in good repair.

(2) The facility shall develop and implement a written maintenance program which shall include a preventive maintenance schedule for major equipment and physical plant systems.

R432-550-24. General Maintenance.

(1) The facility shall maintain facility buildings, fixtures, equipment and spaces in operable condition.

(2) The facility shall provide a safe, clean and sanitary environment.

(3) The facility shall conduct a pest-control program that ensures the facility is free from vermin.

(4) Direct or contract pest-control programs shall comply with Title 4, Chapter 14.

(5) Documentation shall be maintained for Department review.

R432-550-25. Waste Processing Service.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the Department of Environmental Quality, and the local health department having jurisdiction.

R432-550-26. Lighting.

The facility shall provide adequate and comfortable lighting to meet the needs of patients and personnel.

R432-550-27. Limitations of Services.

(1) Birthing center policy shall establish a written risk assessment system to assess the individual risk for each maternal patient.

(2) A clinical staff member shall perform and document a risk assessment for each maternal patient to ensure the patient needs:

(a) fall within the scope of practice and standards of care included in the clinical staff member's professional practice act and within facility policy; and

(b) meet the eligibility requirements for a low risk maternal patient.

(3) Clients shall become ineligible for birthing center care upon development of:

(a) a clinical need for anesthesia or analgesia other than those used in a setting where anesthesia and analgesia are limited in accordance with the facility's written protocols; or

(b) any condition identified intrapartum or postpartum which will be likely to adversely affect the health of the maternal patient or infant and will require management in a general hospital.

R432-550-28. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in Title 26, Chapter 21, Section 11 and R432-3-7 and be punished for violation of a class A misdemeanor as provided in Title 26, Chapter 21, Section 16.

KEY: health care facilities
August 26, 2016 26-21-5
Notice of Continuation November 9, 2015 26-21-16

R527. Human Services, Recovery Services.
R527-5. Release of Information.
R527-5-1. Statutory Authority and Purpose.

(1) The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules by Title 62A, Chapter 11, Section 107(8).

(2) This rule establishes how ORS records may be accessed under Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA).

R527-5-2. Definitions.

(1) Terms used in this rule are defined either explicitly in section 63G-2-103 or implicitly in the text of subsection 63G-2-201.

(2) "Restricted", as used in subsection 63G-2-201(3)(b), refers to records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation. These records are not subject to the procedures for access and disclosure outlined in GRAMA.

R527-5-3. Request for Release of Information.

(1) Written requests for information governed by GRAMA may be submitted in accordance with section 63G-2-204 to:

(a) Office of Recovery Services
ATTN: ORS Records
515 East 100 South
P.O. Box 45033
Salt Lake City, UT 84145-0033.

(2) Written requests for expedited release of information in accordance with section 63G-2-204 may be submitted to:

(a) Office of Recovery Services
ATTN: ORS Records
515 East 100 South
P.O. Box 45033
Salt Lake City, UT 84145-0033.

R527-5-4. Appeal of Denial of Request for Release of Information.

A request to appeal the denial to access a record governed by GRAMA shall be submitted in accordance with Section 63G-2-401 to:

(1) the Director of the Office of Recovery Services for records maintained by ORS.

R527-5-5. Public Information.

(1) In accordance with Utah Code Sections 63G-2-103 (21) and 63G-2-201 a record is public unless classified as private, controlled, protected, or exempt.

(2) In accordance with Utah Code Section 63G-2-307, a record may be classified or reclassified at any time, including after the record has been requested.

R527-5-6. Private Information.

(1) Private records include the following:

(a) the address, date of birth, and Social Security number (SSN)of ORS case participants;

(b) information about state employees, former employees and applicants, except as provided for in 63G-2-302.

(2) Private records may be disclosed when:

(a) disclosure is required by other statutes;

(b) disclosure is for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by the Office of Recovery Services;

(c) a parent who has physical custody of the child, a parent without physical custody of the child, a relative to whom physical custody of the child has voluntarily been given, or a parent's attorney, demonstrates that the other party's address is required in order to serve legal process as the result of a judicial action to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care. This information may not be disclosed if the person whose address is being sought has requested that case information be safeguarded;

(d) a parent who has physical custody of the child, a parent without physical custody of the child, a relative to whom physical custody of the child has been voluntarily given, or a parent's attorney, requests the other party's address related to parent-time based on Title 62A, Section 11, Subsection 304.4;

(e) income information is needed to establish a support order or review a support order for possible modification. This information may only be released to the court or administrative Presiding Officer, the other party or the other party's authorized representative;

(f) a case participant's Social Security number, address or employment information is needed by authorized governmental entities, including law enforcement agencies and;

(i) the requesting entity enforces, litigates or investigates civil, criminal or administrative law and the record is necessary to a proceeding or investigation; or

(ii) the requesting entity is one that collects information for pre-sentence, probationary or parole purposes.

(g) a governmental agency provides written assurance that the record is necessary to the governmental entity's duties and functions and will be used for a purpose similar to the purposes for which ORS collected or obtained the information and that the record use produces a public benefit outweighing the individual privacy right protecting the record;

(3) A private record shall be disclosed in accordance with the requirements of Utah Code Section 63G-2-202.

(4) Private records may not be released when a protective order has been issued in violation of 42 USC 654(26), or if there is reason to believe the release of information may result in physical or emotional harm to the person.

R527-5-7. Controlled Information.

(1) A record is controlled if it meets the requirements of Utah Code Section 63G-2-304.

(2) Controlled records can only be released under the provisions of Utah Code Section 63G-2-202(2).

R527-5-8. Protected Information.

(1) A record is protected if it meets the requirements of Utah Code Section 63G-2-305.

(2) Protected records can only be released under the provisions of Utah Code Section 63G-2-202(4).

R527-5-9. Restricted Records Exempt from Release Under GRAMA.

(1) A record is restricted from release by ORS if it meets the requirements of Utah Code Section 63G-2-201(3)(b).

R527-5-10. Fees.

(1) ORS may provide requested records without a charge unless:

(a) The request is for records which require programmer assistance.

(b) The request is a repeat request by the same requester for information already provided within the last three months.

(2) Contact ORS Records for specific fee amounts.

KEY: accessing records, record requests, GRAMA compliance, records fees
July 22, 2013 62A-11-107
Notice of Continuation August 8, 2016 62A-11-304.4(4)
63G-2

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for providing medical support services.

R527-201-2. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30, 303.31, and 303.32 (2008) which are incorporated by reference in this rule.

R527-201-3. Definitions.

1. Accessibility: Insurance is considered accessible to the child if non-emergency services covered by the health plan are available to the child within 90 minutes or 90 miles of the child's primary residence.

2.National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

3. Cash Medical Support: An obligation to equally share all reasonable and necessary medical and dental expenses of children.

R527-201-4. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-6. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to:

a. order either parent to purchase and maintain appropriate medical insurance for the children, and

b. order both parents to pay cash medical support. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to include a medical support provision.

R527-201-7. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-8. Insurance Credit.

1. If an obligated parent is required to provide health insurance for his or her minor child(ren) and the order was issued by a Utah tribunal, in accordance with U.C.A. 78B-12-212, the parent may receive an insurance credit. ORS/CSS will calculate and apply the insurance credit if the office receives a completed Insurance Premium Credit Request letter. The Insurance Premium Credit Request must include the following information:

a. availability of insurance;
b. policy number;
c. names of all individuals covered by the policy;
d. the out-of-pocket cost for the insurance;
e. proof of the monthly insurance premium paid;
f. the obligated parent's signature; and,
g. the date the letter was completed.

2. Credit will be given to the obligated parent beginning the first day of the month following the date ORS/CSS receives the completed Insurance Premium Credit Request letter.

3. The insurance credit will be ended each calendar year, January 2, in accordance with U.C.A. 78B-12-212 (7), unless the obligated parent provides verification of coverage and costs to ORS/CSS on an updated Insurance Premium Credit Request. To allow sufficient time for ORS to process the annual insurance verification, the obligated parent may provide verification of the coverage as early as November 1 of the previous year.

R527-201-9. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

2. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-10. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain insurance and

insurance is accessible and available at a reasonable cost, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall:

a. notify ORS/CSS within five days after the obligated parent terminates employment;

b. provide the office with the obligated parent's last-known address; and

c. the name and address of any new employer, if known.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-11. Coordination of Health Insurance Benefits.

If, at any point in time, a dependent child is covered by the health, hospital, or dental insurance plans of both parents, the health, hospital, or dental insurance plan of the parent whose birthday occurs first in the calendar year, shall be designated as primary coverage for the dependent child. The health, hospital, or dental insurance plan of the other parent shall be designated as secondary coverage for the dependent child.

R527-201-12. Obligated Parent Receiving Medicaid.

In an unestablished paternity case, if the alleged father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid

March 27, 2012	**30-3-5**
Notice of Continuation August 8, 2016	**30-3-5.4**
	62A-1-111
	62A-11-103(2)
	62A-11-107
	62A-11-326
	62A-11-326.1
	62A-11-326.2
	62A-11-326.3
	62A-11-406(9)
	63G-4-102 et seq.
	78B-12-102(6)
	78B-12-212
	35A-7-105(2)
	45 CFR 303.30
	45 CFR 303.31
	45 CFR 303.32

R590. Insurance, Administration.
R590-178. Securities Custody.
R590-178-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Utah Insurance Code Sections 31A-2-201, 31A-2-206, and 31A-4-108.

R590-178-2. Purpose and Scope.

This rule authorizes domestic insurance companies to utilize modern systems for holding and transferring securities without physical delivery of securities certificates. This rule establishes standards for national banks, state banks, trust companies and broker/dealers to qualify and operate as custodians for insurance company securities.

R590-178-3. Definitions.

As used in this rule:

A. "Agent" means a national bank, state bank, trust company or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation or the Federal Reserve book-entry system.

B. "Clearing corporation" means a corporation, as defined in Subsection 70A-8-101(1), that is organized for the purpose of effecting transactions in securities by computerized book-entry. Clearing corporation also includes "Treasury/Reserve Automated Debt Entry Securities System" and "Treasury Direct" book-entry securities systems established pursuant to 31 U.S.C. Section 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301.

C. "Custodian" means:

1. a national bank, state bank, or trust company that shall at all times during which it acts as a custodian pursuant to this rule, be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below; or

2. a trust company with minimum net worth of $1,500,000 at all times during which it acts as a custodian, is licensed by the United States or any state thereof as a trust company, and is in compliance with the regulatory authority as verified through regular examination by the regulatory authority; or

3. A broker/dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars ($250,000,000).

D. "Custodied securities" means securities held by the custodian or its agent, or that are being cleared or transferred through a clearing corporation.

E. "Federal Reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and other agencies and instrumentalities of the United States for holding and transferring securities of the United States government and the agencies and instrumentalities.

F. "Security" has the same meaning as that defined in 70A-8-101(1).

G. "Securities' certificate" has the same meaning as that defined in 70A-8-101(1).

H. "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent Annual or Transition Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (S.E.C. Form 10-K) filed with the Securities and Exchange Commission.

I. "Treasury/Reserve Automated Debt Entry Securities System" (TRADES) and "Treasury Direct" mean the book entry securities systems established pursuant to 31 U.S.C. Section 3100 et seq., 12 U.S.C. pt. 391 and 5 U.S.C. pt. 301. The operation of TRADES and Treasury Direct are subject to 31 C.F.R. pt. 357 et seq.

R590-178-4. Use of Book-Entry Systems.

A custodian may utilize a clearing corporation to clear and transfer securities when depositing or arranging for the deposit of securities held in or purchased for a domestic insurance company's general account or its separate accounts. When a clearing corporation is used to clear and transfer securities, securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation regardless of the ownership of such securities and securities of small denominations may be merged into larger denominations. The records of any custodian utilizing a clearing corporation to clear and transfer securities shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interest in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities.

R590-178-5. Requirements for Custodial Agreements.

A. An insurance company may, by written agreement with a custodian, provide for the custody of its securities with that custodian. The securities that are the subject of the agreement may be held by the custodian or its agent, by the Federal Reserve book-entry system, or may be cleared or transferred through a clearing corporation.

B. Agreements shall be in writing and shall be authorized by a resolution of the Board of Directors of the insurance company or of an authorized committee of the board pursuant to 31A-5-412. The terms of the agreement shall comply with the following:

1. Securities' certificates held by the custodian shall be held separate from the securities' certificates of the custodian and of all of its other customers.

2. Securities held indirectly by the custodian or its agent, by the Federal Reserve book-entry system, and securities being cleared or transferred through a clearing corporation shall be separately identified on the custodian's official records as being owned by the insurance company. The records shall identify which securities are held by the custodian or its agent, by the Federal Reserve book-entry system, and which securities are being cleared or transferred through a clearing corporation. If the securities are with the Federal Reserve book-entry system or are being cleared or transferred through a clearing corporation, the records shall also identify where the securities are and the name of the clearing corporation. If the securities are held by an agent of the custodian, the records shall contain the name of the agent.

3. All custodied securities shall be registered in the name of the insurance company or in the name of a nominee of the insurance company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee.

4. Custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in Subsection 31A-2-206(2) shall, to the extent required by Subsection 31A-2-206(2), be under the control of the insurance commissioner and shall not be withdrawn by the insurance company without the prior

written approval of the insurance commissioner. Broker/dealers are not authorized to hold custodied securities that are used to meet the deposit requirements set forth in Subsection 31A-2-206(2). To the extent that national banks, state banks, and trust companies hold custodied securities that are used to meet the deposit requirements set forth in Subsection 31A-2-206(2), these custodied securities must be held in an account separate from other custodied securities of the insurance company.

5. The custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish no less than monthly the insurance company with reports of holdings of custodied securities at times and containing information reasonably requested by the insurance company. The custodian's annual report of the insurance company's accounts shall also be provided to the insurance company. Reports and verifications may be transmitted in electronic or paper form.

6. During the course of the custodian's regular business hours, an officer or employee of the insurance company, an independent accountant selected by the insurance company or a representative of the Insurance Department shall be entitled to examine, on the premises of the custodian, the custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company.

7. Upon written request from the insurance company, the custodian and its agents shall be required to send to the insurance company:

(a) all reports they receive from a clearing corporation on their respective systems of internal accounting control, and

(b) reports prepared by outside auditors on the custodian's or its agent's internal accounting control of custodied securities that the insurance company may reasonably request.

8. The custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in an audit of the financial statements of the insurance company.

9. The custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits with respect to custodied securities. These shall be substantially in the form of Custodian Affidavits, Form A, 298-6, Form B, 298-7, and Form C, 298-8, published by NAIC Model Regulation Service.

a. "Form A" is to be used by a custodian where securities entrusted to its care have not been redeposited elsewhere;

b. "Form B" is to be used in instances where a custodian corporation maintains securities on deposit with The Depository Trust Company or like entity; and

c. "Form C" is to be used where ownership is evidenced by book entry at a Federal Reserve Bank.

10. A national bank, state bank or trust company shall secure and maintain insurance protection in an adequate amount covering the bank's or trust company's duties and activities as custodian for the insurance company's assets, and shall state in the custody agreement that protection is in compliance with the requirements of the custodian's banking regulator or other regulator of a trust company. A broker/dealer shall secure and maintain insurance protection for each insurance company's custodied securities in excess of that provided by the Securities Investor Protection Corporation in an amount equal to or greater than the market value of each respective insurance company's custodied securities. The commissioner may determine whether the type of insurance is appropriate and the amount of coverage is adequate.

11. The custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers or employees, and for burglary, robbery, holdup, theft and mysterious disappearance, including loss by damage or destruction.

12. In the event that there is loss of custodied securities, for which the custodian shall be obligated to indemnify the insurance company as provided in paragraph (11) above, the custodian shall promptly replace the securities or the fair value thereof and the value of any loss of rights or privileges resulting from the loss of securities.

13. The agreement may provide that the custodian will not be liable for failure to take an action required under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war, whether declared or not and including existing wars, revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders, other acts of any governmental authority, or any other cause beyond its reasonable control.

14. In the event that the custodian gains entry in a clearing corporation through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian. However, if the agent shall be subject to regulation under the laws of a jurisdiction that is different from the jurisdiction the laws of which regulate the custodian, the Commissioner of Insurance of the state of domicile of the insurance company may accept a standard of liability applicable to the agent that is different from the standard of liability applicable to the custodian.

15. The custodian shall provide written notification to the insurance company's domiciliary commissioner if the custodial agreement with the insurance company has been terminated or if 100% of the account assets in any one custody account have been withdrawn. This notification shall be remitted to the insurance commissioner within three (3) business days of the receipt by the custodian of the insurance company's written notice of termination or within three (3) business days of the withdrawal of 100% of the account assets.

R590-178-6. Requirements for Deposits with Affiliates.

A. Nothing in this rule shall prevent an insurance company from depositing securities with another insurance company with which the depositing insurance company is affiliated, provided that the securities are deposited pursuant to a written agreement authorized by the board of directors of the depositing insurance company or an authorized committee thereof and that the receiving insurance company is organized under the laws of one of the states of the United States of America or of the District of Columbia. If the respective states of domicile of the depositing and receiving insurance companies are not the same, the depositing insurance company shall have given notice of the deposit to the insurance commissioner in the state of its domicile and the insurance commissioner shall not have objected to it within thirty (30) days of the receipt of the notice.

B. The terms of the agreement shall comply with the following:

1. The insurance company receiving the deposit shall maintain records adequate to identify and verify the securities belonging to the depositing insurance company.

2. The receiving insurance company shall allow representatives of an appropriate regulatory body to examine

records relating to securities held subject to the agreement.

3. The depositing insurance company may authorize the receiving insurance company:

a. To hold the securities of the depositing insurance company in bulk, in certificates issued in the name of the receiving insurance company or its nominee, and to commingle them with securities owned by other affiliates of the receiving insurance company, and

b. To provide for the securities to be held by a custodian, including the custodian of securities of the receiving insurance company or in a clearing corporation.

R590-178-7. Penalties and Prohibitions.

A. Insurance companies found to be or to have been in violation of this rule shall be subject to fine, suspension, and revocation of license or other penalties permitted by Section 31A-2-308.

B. Insurance companies are not authorized to provide for the custody of their securities except as granted in this rule. Custodial securities held in violation of this rule shall be disregarded in determining and reporting the financial condition of an insurer.

R590-178-8. Enforcement Date.

The commissioner will begin enforcing this rule 90 days from the rule's effective date.

R590-178-9. Separability.

If any provision of this rule or the application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions may not be affected.

KEY: insurance law
September 19, 2006 31A-4-108
Notice of Continuation August 2, 2016

R590. Insurance, Administration.
R590-207. Health Producer Commissions for Small Employer Groups.
R590-207-1. Authority.

This rule is issued and based upon the authority granted the commissioner under Subsections 31A-2-201(3)(a) and 31A-30-104(7).

R590-207-2. Purpose.

The purpose of this rule is to establish guidelines relating to commission structure for insurance producers in the small employer group market that affect access to health insurance coverage for small employer groups.

R590-207-3. Applicability.

This rule applies to all licensed carriers doing health insurance business under Title 31A, Chapter 30, the Individual and Small Employer Health Insurance Act.

R590-207-4. Definitions.

The definitions in Sections 31A-1-301 and 31A-30-103 apply to this rule.

R590-207-5. Commission Schedule Structure.

(1) A health insurance carrier shall not structure producer commission schedule in a way that, directly or indirectly, creates a restriction, hindrance, or barrier to access to coverage for the smallest size groups or groups with the greatest health risks.

(2) The commission in the commission schedule for the smallest size groups or the groups with the greatest health risks may not be designed to avoid, directly or indirectly, the requirements of guaranteed issue or renewal in the marketing of health insurance to small business owners.

(3) An insurer shall not design a commission structure that lessens the incentive to insure a small employer group that is smallest in size or with the greatest health risks.

(4) An insurer is not required to base commissions on a percentage. An insurer is permitted to pay no commissions on all business or to pay a dollar amount based on factors other than risk characteristics.

R590-207-6. Commission Structure Examples.

(1) Examples of commission structures that are in compliance would be:

(a)(i) a 10% commission for employer group size 2-5;

(ii) a 9% commission for group size 6-25; and

(iii) a 7% commission for group size 26-50; or

(b)(i) $20/ Per Member Per Month (PMPM) for employer group size 2-5;

(ii) $18/PMPM for group size 6-25; and

(c) $16/PMPM for group size 26-50.

(2) An example of a commission structure that is not in compliance would be:

(i) 3% commission for employer group size 2-5;

(ii) 8% commission for group size 6-25; and

(iii) 7% commission for group size 26-50.

R590-207-7. Penalties.

Any carrier with a commission structure found to be in violation of this rule shall be subject to the penalties provided for in Section 31A-2-308.

R590-207-8. Enforcement Date.

The commissioner will begin enforcing the amendments to this rule 45 days from the rule's effective date.

R590-207-9. Severability.

If any provision or clause of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of these provisions shall not be affected.

KEY: insurance law

August 2, 2011	**31A-2-201**
Notice of Continuation August 31, 2016	**31A-2-202**

R590. Insurance, Administration.
R590-210. Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contracts.
R590-210-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 through 6820). The commissioner is also authorized under Subsection 31A-23a-417(3) to adopt rules implementing the requirements of Title V, Sections 501 to 505 of the federal act (15 U.S.C 6801 through 6807).

R590-210-2. Purpose.

The purpose of this rule is to exempt any person that is licensed or registered by the department that sells or provides the following from the requirements of the department's rule, R590-206:

(1) manufacturer warranties;

(2) manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product; and

(3) service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles.

R590-210-3. Applicability and Scope.

This rule applies only to persons licensed or registered by the department that sell or provide manufacturer warranties, manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product, and service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles.

R590-210-4. Enforcement.

Persons licensed or registered by the department that sell or provide manufacturer warranties, manufacturer service contracts paid for with consideration that is in addition to the consideration paid for the product, and service contracts paid for with consideration in addition to the consideration paid for the product and the service contract is for the repair or maintenance of goods, including motor vehicles are hereby exempted from the requirements of the department's rule, R590-206.

R590-210-5. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity 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.

KEY: insurance law privacy
October 12, 2001 **31A-2-201**
Notice of Continuation August 31, 2016 **31A-2-202**
31A-23a-417
15 U.S.C. 6801-6807

R590. Insurance Administration.
R590-237. Access to Health Care Providers in Rural Counties.
R590-237-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(2), 31A-2-201(3)(a), and 31A-8-501(7)(c) wherein the commissioner is empowered to administer and enforce Title 31A and make administrative rules to implement Section 31A-8-501.

R590-237-2. Purpose.

The purpose of this rule is to

(1) identify the counties with a population density of less than 100 people per square mile;

(2) identify independent hospitals;

(3) identify federally qualified health centers in Utah; and

(4) describe how a health maintenance organization (HMO) shall:

(a) use the information identifying the counties, independent hospitals and federally qualified health centers described in (1), (2), and (3) above; and

(b) notify the subscribers, independent hospitals and federally qualified health centers; and

(c) ensure an HMO provides the notice required by Subsection 31A-8-501(7)(d)(ii).

R590-237-3. Applicability and Scope.

This rule applies to all licensed health maintenance organizations as defined in Subsection 31A-8-101(8).

R590-237-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-8-101, the following definitions apply to this rule:

(1) "Board of Directors," for the purpose of this rule, means the local board of directors for the independent hospital that is directly responsible for the daily policy and financial decisions. board of directors does not include a corporate board of directors for the entity that owns the independent hospital.

(2) "Credentialed staff member" means a health care provider with active staff privileges at an independent hospital or a federally qualified health center. A credentialed staff member is not required to be an employee of the independent hospital or federally qualified health center.

(3) "Federally Qualified Health Center," as defined in the Social Security Act 42 U.S.C., Sec. 1395x, means an entity which:

(a)(i) is receiving a grant under Section 330, other than Subsection (h) of the Public Health Service Act 42 U.S.C, 254b; or

(ii)(A) is receiving funding from a grant under a contract with the recipient of such a grant; and

(B) meets the requirements to receive a grant under Section 330, other than Subsection (h) of the Public Health Service Act 42 U.S.C. 254b;

(b) based on the recommendation of the Health Resources and Services Administration within the Public Health Service is determined by the Secretary of Health and Human Services to meet the requirements for receiving such a grant;

(c) was treated by the Secretary of Health and Human Services as a comprehensive Federally funded health center as of January 1, 1990; or

(d) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act, 25 U.S.C. 450f, or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act, 25 U.S.C. 1651.

(4) "Local practice location" means the provider's office where services are rendered which is:

(a) permanently located within a county with a population density of less than 100 people per square mile; and

(b) is within 30 miles of paved roads of:

(i) the place where the enrollee lives or resides; or

(ii) the location of the independent hospital or federally qualified health center at which the enrollee may receive covered benefits pursuant to Subsection 31A-8-501(2) or (3).

(5) "Policy and financial decisions" means the day-to-day decisions made by the local Board of directors with regard to hospital policy and financial solvency.

(6) "Provider" means any person who:

(a) furnishes health care directly to the enrollee; and

(b) is licensed or otherwise authorized to furnish the health care in this state.

(7) "Referral" means:

(a) the request by a health care provider for an item, service, test, or procedure to be performed by another health care provider;

(b) the request by a physician for a consultation with another physician; or

(c) the request or establishment of a plan of care by a physician.

(8) "Rural County" means a county as described in Subsection 31A-8-501(2)(b).

R590-237-5. Rural Counties.

(1) For the purposes of Subsection 31A-8-501(2)(b), rural counties where independent hospitals built prior to December 31, 2000 include all Utah counties except Davis, Salt Lake, Utah and Weber.

(2) For the purposes of Subsection 31A-8-501(2)(b), rural counties where independent hospitals built after December 31, 2000 include all Utah counties except Cache, Davis, Salt Lake , Utah, Washington and Weber.

(3) For purposes of Subsection 31A-8-501(5)(b)(i), non-contracting provider referrals to non-contracting providers are allowed in all counties except: Cache, Davis, Salt Lake, Utah, Washington, and Weber counties.

R590-237-6. Independent Hospitals.

The following are the independent hospitals that fall under Section 31A-8-501:

(1) Allen Memorial Hospital, Moab, Grand County, Utah

(2) Ashley Valley Medical Center, Vernal, Uintah County, Utah

(3) Beaver Valley Hospital, Beaver, Beaver County, Utah

(4) Brigham City Community Hospital, Brigham City, Box Elder County, Utah

(5) Cache Specialty Hospital, Logan, Cache County, Utah (Subject to the provisions of Subsection 31A-8-501(2)).

(6) Central Valley Medical Center, Nephi, Utah

(7) Garfield Memorial Hospital, Panguitch, Utah

(8) Gunnison Valley Hospital, Gunnison, Sanpete County, Utah

(9) Kane County Hospital, Kanab, Kane County, Utah

(10) Milford Valley Memorial Hospital, Milford, Beaver County, Utah

(11) Mountain West Medical Center, Tooele, Tooele County, Utah

(12) San Juan Hospital, Monticello, San Juan County, Utah

(13) Uintah Basin Medical Center, Roosevelt, Duchesne County, Utah

R590-237-7. Federally Qualified Health Centers.

The following are the federally qualified health centers that fall under Section 31A-8-501:

(1) Beaver Medical Clinic, Beaver, Beaver County, Utah

(2) Blanding Family Practice/Blanding Medical Center, Blanding, Utah

(3) Bryce Valley Clinic, Cannonville, Utah

(4) Carbon Medical Services, Carbon, Carbon County, Utah

(5) Circleview Clinic, Circleview, Piute County, Utah

(6) Duchesne Valley Medical Clinic, Duchesne, Duchesne County, Utah

(7) Emery Medical Center, Castledale, Emery County, Utah

(8) Enterprise Valley Medical Clinic, Enterprise, Washington County, Utah

(9) Garfield Memorial Clinic, Panguitch, Garfield County, Utah

(10) Green Valley/River Clinic, Green River, Emery/Grand Counties, Utah

(11) Halchita Clinic, San Juan County, Utah

(12) Hurricane Family Practice Clinic, Hurricane, Washington County, Utah

(13) Kamas Health Center, Kamas, Summit County, Utah

(14) Kazan Memorial Clinic, Escalante, Garfield County, Utah

(15) Long Valley Medical, Kane County, Utah

(16) Milford Valley Clinic, Milford, Beaver County, Utah

(17) Montezuma Creek Health Center, Montezuma Creek, San Juan County, Utah

(18) Monument Valley Health Center, Monument Valley, Utah

(19) Navajo Mountain Health Center, San Juan County, Utah

(20) Wayne County Medical Clinic, Bicknell, Wayne County, Utah

R590-237-8. Rural Health Notification.

(1) An HMO shall provide its subscribers with the notice required by Subsection 31A-8-501(7)(d)(ii) no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon request thereafter. This information must be included and easily accessible on the HMO's website. When rural counties, independent hospitals, or federally qualified health centers change, the HMO shall provide an updated notice to its affected subscribers within 30 days.

(2) An HMO shall provide to the independent hospitals and federally qualified health centers in the HMO service area the notice required by Subsection 31A-8-501(7)(d)(ii) within 30 days.

R590-237-9. Penalties.

An HMO found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-237-10. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R590-237-11. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: health care providers
September 7, 2006 31A-2-201
Notice of Continuation August 31, 2016 31A-8-501

R608. Labor Commission, Antidiscrimination and Labor, Fair Housing.
R608-1. Utah Fair Housing Rules.
R608-1-1. Authority and Purpose.

Pursuant to Section 57-21-8(2)(a), the Utah Labor Commission adopts this rule to establish the procedures necessary to implement the Utah Fair Housing Act.

R608-1-2. Definitions.

The following definitions are in addition to the definitions set forth in Section 57-21-2 of the Utah Fair Housing Act

A. "Act" means the Utah Fair Housing Act, Chapter 21, Title 57.

B. "Commissioner" means the Commissioner of the Utah Labor Commission.

C. "Complaint" means an allegation of an unlawful housing practice, filed with the Division in compliance with these rules. "Complaint" includes amended or supplemental complaints.

D. "Court" means the district court in the judicial district of the state of Utah in which the asserted unfair housing practice occurred, or if this court is not in session at that time, then any judge of any court.

E. "Unlawful housing practice" means any discriminatory housing practice prohibited by the Act.

R608-1-3. Reliance on State and Federal Precedent.

The Division and Commission will consider relevant State and Federal precedent in interpreting and applying the Act.

R608-1-4. Computation of Time Limits.

A. A Determination, Order, or Notice required by the Act or this rule is deemed issued on the date on the face of the Determination, Order or Notice.

B. A complaint, response, request for reconsideration, or election is considered to be "filed" on the date it is received by the Division or Commission, whether by mail or by personal delivery. Each such document shall be date stamped by Division staff on the date of receipt.

C. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R608-1-5. Designation of Proceedings as Informal-Exception.

A. All proceedings pursuant to the Act and this rule are hereby designated as informal adjudicatory proceedings for purposes of the Utah Administrative Procedures Act, Title 63, Chapter 46b, except that proceedings before the Commission's Adjudication Division for de novo review of the Director's Determination and Order are formal proceedings.

B. Court proceedings are subject to the court's rules of procedure.

R608-1-6. Complaints-Filing-Time Limits-Amendment and Withdrawal.

A. Any person aggrieved by an unlawful housing practice may file a complaint with the Division.

1. The complaint must be in the form designated by the Division and verified by the complainant.

2. The complaint shall contain the complainant's concise statement setting forth, to the extent reasonably possible, the following information:

a. The specific basis for complainant's belief that an unlawful housing practice has occurred, with relevant dates, places and the names of any individual participating in the alleged unlawful housing practice;

b. The specific basis for the complainant's belief that the alleged conduct is subject to the Act; and the dates and places of such unlawful housing practices;

c. The specific damages the complainant believes he or she has suffered as a result of the unlawful housing practice.

B. Division staff shall be available during normal business hours to provide reasonable assistance to complainants in completing and filing complaints.

C. Pursuant to Section 57-21-9(1), the complaint must be filed with the Division within 180 days after the alleged unlawful housing practice occurred.

D. The Director shall permit a complaint to be reasonably and fairly amended or supplemented, either by the Division or by the complainant, in order to accomplish the purpose of the Act. Such amendment or supplement may include additional respondents identified in the investigation as persons engaged in the unlawful housing practice on which the complaint is based. Procedures for filing and processing an amended or supplemental complaint shall be the same as for filing an original complaint.

E. With the Director's approval, a complainant may withdraw a complaint at any time by submitting a signed request for withdrawal to the Division.

R608-1-7. Notice Requirements.

A. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the complainant, including:

1. The date the complaint was filed with the Division;

2. A copy of the complaint;

3. The time limits applicable to the complaint and investigation process;

4. A statement of the complainant's rights and obligations under the Act;

5. A statement of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

6. A statement advising the complainant that retaliation against any person, or individual associated with that person, who is filing, testifying, assisting, or participating in an investigation, conciliation or administrative proceeding, is a discriminatory housing practice prohibited by the Act; and

7. A statement, if applicable, that the terms of any rental agreement remain in effect.

B. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the respondent, which notice shall include:

1. Identification of the alleged unlawful housing practice on which the complaint is based;

2. The date the complaint was filed with the Division;

3. A copy of the complaint;

4. A statement of time limits applicable to the complaint and investigation process;

5. A statement of the respondent's rights and obligations under the Act, including respondent's obligation to submit a response to the complaint, as required by R608-1-8.

6. A statement informing the respondent of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for

commencing such action;

7. A statement advising the respondent that retaliation against any person, or individual associated with that person, who is filing a complaint, testifying, assisting, or participating in an investigation, conciliation, or administrative proceeding, is a discriminatory housing practice prohibited by the Act.

R608-1-8. Response to Complaint.

A. A respondent shall file a signed response to the complaint with the Division within 10 days from the date of the notice required by R608-1-7.B.

B. The response must address each allegation contained in the complaint, including any available and relevant data and information regarding respondent's business practices.

C. Division staff shall be available during normal business hours to provide reasonable assistance to respondents in completing and filing responses.

D. Failure to file a response may result in the Division concluding its investigation based on information provided by the complainant and such other information as is reasonably available to the Division. Alternatively, the Commission may use its subpoena powers to compel production of the information required by this rule.

R608-1-9. Investigation-Report.

A. Within 30 days of the filing of a complaint, the Division shall commence proceedings to throughly investigate and, if possible, conciliate the complaint.

B. The Division shall complete its investigation within 100 days after filing of a complaint. If the Division is unable to do, it shall notify the parties in writing of the reason for the delay.

C. The Division may, with reasonable notice to the parties, conduct on-site visits, interviews, and fact-finding conferences, and take such other action as is reasonably necessary to investigate the complaint. Pursuant to Section 57-21-8(2)(c) of the Act, the Commission may issue subpoenas to compel production of necessary evidence. Additionally, a party's unjustified failure to cooperate with the Division's reasonable investigative requests may result in the Division concluding its investigation based on such other information as is available to the Division.

D. The Division shall prepare a final investigative report on each complaint, which shall include:

1. A summary of all contacts with complainants and respondents, including the dates of such contacts;

2. A summary of contacts with witnesses, including the dates of contact; and

3. A summary of pertinent records.

R608-1-10. Determination.

A. On completion of the investigation, the Director shall review the investigative report and determine whether reasonable cause exists to believe that an unlawful housing practice has occurred.

B. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, the Director shall issue a determination dismissing the complaint. The complainant may then take such other action as described in R608-1-12.

C. If the Director finds reasonable cause to believe that an unlawful housing practice has occurred, the Director shall take such further action as described in Rule R608-1-13.

R608-1-11. Conciliation.

A. During the period beginning with the filing of the complaint and ending with the Director's determination, the Division shall, to the extent feasible, engage in conciliation to settle the matter or, in accordance with HUD procedures, enter into an enforcement agreement.

1. Conciliation proceedings are confidential pursuant to Section 57-21-9(7)(a).

2. Any conciliation agreement shall be subject to approval by the Director.

3. Any party can enforce the signed and approved conciliation agreement in court proceedings.

B. Nothing in these rules prevents complainants and respondents from settling a complaint through their own efforts. However, the Division will not dismiss the complaint until the parties' settlement agreement has been submitted to, and approved by, the Director.

R608-1-12. Order of Dismissal-Reconsideration-Right to Private Civil Action.

A. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, or is about to occur, the Director shall issue a Determination and Order dismissing the Complaint.

B. The complainant may ask the Director to reconsider such order of dismissal by complying with the requirements of Section 63G-4-302 of the Utah Administrative Procedures Act.

C. The Director shall issue a decision either granting or denying the request for reconsideration.

1. If the Director grants reconsideration, the Director shall reopen the investigation, amend the Director's prior Determination and Order, or take such other necessary action.

2. If the Director denies reconsideration, the Director's Determination and Order is not subject to any additional agency or judicial review. However, the complainant may commence a private civil action pursuant to Section 57-21-12(1).

R608-1-13. Order Finding Unlawful Housing Practice-Appeal-Choice of Forum.

A. If the Director concludes that an unlawful housing practice has occurred, the Division shall informally attempt to eliminate or correct the unlawful housing practice by conducting a conciliation conference pursuant to R608-1-11.

B. If conciliation is unsuccessful, the Director shall issue a determination ordering appropriate relief as authorized by Section 57-21-11. The Director's determination shall be made public unless the Director determines that the matter involves a privacy interest entitled to protection by law, or that disclosure is not required to further the purposes of the Act.

C. A respondent disagreeing with the Director's determination may obtain de novo review by filing a written request for review with the Director within 30 days from the date the Director's determination.

1. If no timely request for de novo review is filed, the Director's determination is the Commission's final order and not subject to additional agency or judicial review.

2. If a timely request for de novo review is filed, the Director shall:

a. Notify the parties of such request for review by regular mail at their last known address of record; and

b. Inform the parties that the review proceeding will be conducted by the Commission's Adjudication Division unless any party elects to have such review conducted in court.

3. Any election for court review must be received by the Director within 20 days of the date of mailing of the Director's notice.

R608-1-14. Representation of Complainants.

A. If a respondent has requested de novo review of the Director's Determination, the Commission shall consider whether the Determination is supported by substantial

evidence.

B. If the Commission concludes the Determination is supported by substantial evidence, the Commission shall provide legal representation to support the Determination in the de novo review proceeding.

C. If the Commission concludes the Determination is not supported by substantial evidence, the Commission shall not provide legal representation to support the Determination in the de novo review proceeding.

D. The Commission shall notify the parties of its conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination within twenty days from the date the respondent files a request for de novo review.

E. The Commission's conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination is not subject to further agency or judicial review.

R608-1-15. Procedures For De novo Review.

A. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted by the Commission's Adjudication Division, the following standards apply:

1. The Division shall refer the matter to the Adjudication Division, which shall designate an Administrative Law Judge to serve as presiding officer;

2. The proceeding shall be conducted as a formal agency adjudicative proceeding pursuant to the relevant provisions of the Utah Administrative Procedures Act, Title 63G, Chapter 4;

3. Within 30 days from referral, the Administrative Law Judge shall schedule an evidentiary hearing to be held within 120 days of the referral, unless it is impracticable to do so;

4. Any aggrieved party may intervene in the action;

5. The Commission shall make final administrative disposition of the complaint within one year after the complaint is filed unless it is impracticable to do so. If the agency is unable to make a final administrative disposition within one year, the Commission shall notify the parties in writing of the reason for the delay.

B. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted in court, the following standards apply:

1. If, pursuant to Rule R608-1-14, the Commission has concluded the Director's Determination is supported by substantial evidence, the Commission shall commence a court action to support the Determination. Such action shall be commenced within 30 days from the date of the election for court review.

2. If, pursuant to Rule R608-1-14, the Commission has concluded the Determination is not supported by substantial evidence, the Commission shall not commence a court action to support the Determination. In such case, the complainant may commence a civil action in a court of competent jurisdiction as provided by the Act.

R608-1-16. Declaratory Orders.

A. Purpose. 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. Petition Form and Filing.

1. The petition shall be addressed and delivered to the Director who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. clearly identify the statute, rule, or order to be reviewed;

c. describe in detail the situation or circumstances in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during normal business hours;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

C. Review.

1. the agency shall not review a petition for a Declaratory Order that is:

a. not within the jurisdiction and competency of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

2. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with law that the agency deems necessary to provide adequate review and due consideration of the petition.

3. The Director may issue a Declaratory Order pursuant to Section 63G-4-503(6).

D. Administrative Review.

1. Administrative review of the Director's Declaratory Order shall be conducted pursuant to Section 63G-4-302.

R608-1-17. Assistance Animals.

A. General

1. Pursuant to the Utah Fair Housing Act and the federal Fair Housing Act, this rule defines the circumstances in which an individual with a disability is entitled to an assistance animal as a reasonable accommodation in a dwelling that would otherwise restrict or prohibit the presence of an animal. The term "assistance animals" as used in this rule means animals that assist, support, or provide service to persons with disabilities and may include or otherwise be referred to as service animals, emotional support animals, assistive animals, or therapy animals.

2. The assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. This requires a demonstrable relationship between the individual's disability and the assistance the animal provides.

a. Housing providers are entitled to verify the existence of the individual's disability as well as the need for the assistance animal as an accommodation for that disability if either is not readily apparent. Accordingly, an individual proposing an assistance animal as a reasonable accommodation for a disability may be required to provide documentation form a physician, psychiatrist, or other qualified healthcare professional that the animal provides support that alleviates a symptom or effect of the disability.

b. Housing providers need not permit an assistance animal as an accommodation to a person with a disability if the provider demonstrates that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of a housing facility, program or service.

c. Housing providers are not required to provide an accommodation that poses a direct threat to the health or safety of others. Thus, if a particular assistance animal has a history of dangerous behavior, if the animal is out of control

and its handler does not take effective action to control it, the housing provider is not required to accept the assistance animal.

B. Relationship of this rule to other laws addressing service animals.

1. The federal Fair Housing Act, the Utah Fair Housing Act and this rule establish the standards for assistance animals as a reasonable accommodation in housing.

2. This rule does not apply to use of service animals in public areas, common carriers, public conveyances, public accommodations or places of amusement, which are governed by standards set forth in Utah Code Ann. Section 62A-5b-101 et seq., "Rights and Privileges of a Person with a Disability."

KEY: housing, fair housing, discrimination, time
November 21, 2011 57-21-1 et seq.
Notice of Continuation August 29, 2016 63G-4-102 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-1. Minimum Wage, Clarify Tip Credit, and Enforcement.
R610-1-1. Authority.

This rule is enacted under authority of Section 34-40-105.

R610-1-2. Definitions.

The following definitions are in addition to the statutory definitions specified in Section 34-40-102.

A. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and includes the personnel within the Division responsible for enforcement.

B. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

R610-1-3. Coverage.

A. All employers employing workers in the state of Utah, except those exempted by Section 34-40-104, shall pay the established minimum hourly wages of $5.85 an hour for all hours employed effective September 8, 2007; $6.55 an hour for all hours employed effective July 24, 2008; and $7.25 an hour for all hours employed effective July 24, 2009.

B. As per Sections 34-23-301 and 34-40-103, effective July 23, 2007, a minor employee shall be paid at least $4.25 per hour for the first 90 days of employment with an employer; and thereafter, minimum wage established in subsection A of this rule.

C. Any employer claiming exemption under Subsection 34-40-104(1)(k), shall provide to the Division a statistical report of the average wage paid within 60 days of the end of the regular operating season. The Division may, upon notice, perform an on-site inspection to verify the report in accordance with Sections 34-40-201 and 34-40-203.

R610-1-4. Tips and Commissions.

A. An employer may credit the tips, sometimes referred to as gratuities, received by tipped employees (an example would be waiters and waitresses) against the employer's minimum wage obligation. The tips must be received by the employee, reported to the employer, and must reach a threshold of at least $30.00 per month before credit can be allowed.

B. An employer has a cash wage obligation of at least $2.13 per hour in meeting the required minimum wage. If an employee's tips combined with the employer's cash wage obligation of $2.13 per hour do not equal the minimum hourly wage requirement, the employer must increase its cash wage obligation to make up the difference.

C. A compulsory charge for service imposed on a customer by an employer's establishment, is not a tip. Such charges are part of the employer's gross receipts and within its discretion to allocate. Where service charges are imposed and the employee receives no tips, the employer must pay the entire minimum wage and overtime required by law.

D. All tips shall be retained by the employee receiving the tips. However, this requirement does not preclude tip pooling or sharing arrangements where an employer mandates that tips be pooled and divided or shared among those employees who customarily and regularly receive tips.

1. A bona fide tip pooling or sharing arrangement may include employees who customarily and regularly receive tips from customers directly or via a tip pooling or sharing arrangement.

2. Dishwashers, chefs, cooks, and janitors are not tipped employees and do not qualify for a tip credit nor are they eligible to participate in an employer mandated tip pooling or sharing arrangement.

E. Every employer using the tip credit must so inform the affected employee at the time of hire. Any tip pooling or sharing arrangement must be made in writing and provided to each affected employee at the time of hire or prior to implementation.

F. Where tips are charged on a credit card, and the employer must pay the credit card company a percentage of the bill for its use, the employer may reduce the amount of the credit card tips paid over to the employee by a percentage no greater than that charged by the credit card company.

G. In computing the minimum wage, tips and commissions must be counted in the payroll period in which the tip or commission is earned.

H. This section does not apply to tips or commissions as delineated in Section 34-40-104(1).

R610-1-5. Enforcement of Minimum Wage.

A. The Division may enforce compliance with the state minimum wage in the same manner as outlined in R610-3.

B. When more than one employee is affected by noncompliance of minimum wage requirements, the Division shall treat this alleged infraction of noncompliance as a class action.

C. The Division may commence agency action in accordance with Section 63G-4-201 to investigate and determine compliance or noncompliance.

D. If an employer is found in noncompliance with the state minimum wage requirements, that employer shall be subject to penalties under Section 34-40-204.

E. If the employees determine that a civil action to enforce compliance with state minimum wage is necessary, they may bring an action under Section 34-40-205.

R610-1-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve a complaint under minimum wage requirements is accomplished by the complainant filing a complaint form. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63G-4-201 (2).

R610-1-7. Investigation and Enforcement.

If, upon investigation, the Division concludes that a violation of Sections 34-40-103, 34-40-104, 34-40-201, or 34-40-203 has occurred it may impose a penalty pursuant to Sections 34-40-202 and 34-40-204.

R610-1-8. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal

holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

KEY: wages, minors, labor, time
June 13, 2008 **34-23-101 et seq.**
Notice of Continuation August 29, 2016 **34-28-1 et seq.**
34-40-101 et seq.
63G-4-102 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-2. Employment of Minors.
R610-2-1. Authority.

This rule is enacted under authority of Section 34-23-104.

R610-2-2. Definitions.

A. "Commission" means the Labor Commission.

B. "Complainant" means any person making a claim, or a representative of a minor alleging a violation.

C. "Complaint" means a properly completed Complaint Form filed with the Division by a complainant or a representative of the complainant.

D. "Defendant" means any person or entity against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Commission and the personnel within the Division responsible for enforcement.

G. "Employer" includes every person, firm, partnership, association, limited liability company, corporation, receiver, or other officer of any of the above mentioned classes, employing any person in this state or who permits any person to perform work, labor, or services.

H. "Employer's immediate family" includes children, step children, brothers, and sisters living in the home of a sole proprietor or partnership, but may not apply to a corporation.

I. "Hazardous occupation" means any occupation defined as hazardous by the United States Department of Labor under 29 U.S.C. 201 et seq. of the Fair Labor Standards Act.

J. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

K. "License" means a document issued by the Division to an employer employing minors in door-to-door sales.

L. "Nonprofit group" means a group recognized under Section 501(c) of the Internal Revenue Code as having nonprofit exempt status.

M. "Presiding Officer" includes those defined by Section 63G-4-103(1)(h)(I).

N. Additional definitions may be found in Section 34-23-103.

R610-2-3. Employment of Minors - General.

A. Every employer must allow the opportunity for a meal period of not less than 30 minutes and not later than five hours after the beginning of a minor employee's workday. If, during the meal period, the employee cannot be completely relieved of all duties and permitted to leave the work station or area, the meal period must be paid as time worked.

B. At least a 10 minute paid rest period for each four hours, or fraction thereof, shall be provided for each minor employee; however, no minor employee shall be required to work over three consecutive hours without a 10 minute rest period.

C. In those unusual situations where the specific provisions of subsections A. or B. cannot be met, the Division may decide whether the general intent of the rules has been met to ensure attainment of reasonable safeguards for a minor's health, safety, and education.

R610-2-4. Employment of Minors Engaged in Door-to-Door Sales, License.

A. The following shall apply for minors in the age range of 12 through 15 who work for income by engaging in sales of cookies, candies, magazines, merchandise coupons, and other similar products by door-to-door methods at locations including residential housing areas, shopping centers, and malls:

1. An employer-employee relationship is determined to exist if minors are paid by time, piece, carton, quantity, task, bonus, or any other basis of calculation;

a. employees shall be paid at least the Utah minimum wage in effect at the time the work is performed and shall include all time from the time of pickup to the time the minor is returned to the minor's home, except for that time utilized as a meal period as specified in R610-2-3.A.;

b. minors engaged in door-to-door sales of goods, products, or services are not independent contractors or outside sales personnel for purposes of payment of minimum wage;

2. Minors cannot be transported further than 30 miles from where they reside;

3. Minors so engaged must work in pairs, as a team, on the same or opposite side of the street while selling in residential housing areas;

4. Minors so engaged must be supervised by an adult supervisor for each crew of ten or fewer minors;

5. Minors must be within the sight or sound of the adult supervisor at least once every hour while selling in residential housing areas;

6. Minors must be returned to their respective homes daily after each day's work by 9:30 p.m.;

7. Minors must be allowed an opportunity to use rest room facilities at least once every three hours;

8. Minors must be allowed to partake of food and drink if they work more than three consecutive hours. This benefit cannot be utilized by the employer to coerce minors into making a set number of sales;

9. The driver of the vehicle that transports minor workers must be licensed by the state to transport minors;

10. Businesses must be licensed in accordance with the respective city or county ordinances in which they are employed;

11. Five days prior to conducting business in Utah, every employer employing minors who operates a door-to-door sales business must obtain a license from the Division. A written application for a license shall be filed with the Division and shall include:

a. the company or business name, address, and telephone number;

b. the name, address, and telephone number of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations;

c. the business or occupation engaged in by the owner, partners, members, principals, officers, and directors for at least two years immediately preceding the filing of the application;

d. the name and address of any supplier of any item to be sold by minors for the door-to-door sales operation;

e. the identity of any out of state affiliation, and the name, address, and telephone number of local contact person;

f. certified results of a criminal history background check by the Utah Bureau of Criminal Identification for the owner, each partner from applicant partnerships, each member of applicant limited liability companies, the principals, officers, and directors of applicant corporations, and of all supervisors and van drivers who have contact with the minor employees; the criminal history background check must be current for the year the license is sought;

g. a recent photograph of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations; and

h. two separate letters of recommendation attesting to the reliability and responsibility of each owner, partner, member, principal, officer, director, supervisor, and van driver. These letters must be written and signed by persons who are residents of the state of Utah and who have known the owner, partner, member, principal, officer, director, supervisor, or van driver at least one year.

12. For each supervisor or van driver hired subsequent to submission of application for license the business operator shall submit to the Division the certified results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. and letters of recommendation as delineated in Subsection R610-2-4.A.11.h. prior to contact with any minor employee by the supervisor or van driver.

13. Before a license shall be issued pursuant to this rule, the applicant shall deposit with the Commission a bond in the penal sum of $10,000 with two or more sureties. The bond shall be made payable to the Labor Commission and shall be conditioned that the applicant, supervisor, and van driver will comply with the provisions of Title 34, Chapters 23, 28, and 40, and with the provisions of R610-1, R610-2, and R610-3, and shall pay all penalties or damages occasioned by any violation of these provisions in carrying on the business for which the license is issued.

14. The Division may deny or revoke a license when:

a. an applicant, supervisor, or van driver has been adjudged guilty of a violation of any criminal act, other than a minor traffic violation, in any state; or

b. an applicant has been determined by any state or federal agency to be in violation of any labor law within the past five years; or

c. any information provided as a part of the application process is false or misleading; or

d. any applicant fails to complete the licensing process and fails to provide the information requested; or

e. any business operator fails to submit to the Division the name and address of any van driver or supervisor hired along with the results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. or letters of recommendation as delineated in Subsection R610-2-4.A.11.h. at the time of hiring the van driver or supervisor; or

f. any business operator fails to comply with the provisions of Utah labor law or Labor Rules 610-1, 610-2, or 610-3.

15. Each license issued pursuant to this rule shall expire on December 31 of the year issued.

16. Annually, a completed application for renewal of license form must be completed and submitted to the Division along with all requested documents prior to December 31.

17. A door-to-door sales business shall not publish, print, or otherwise represent that the Commission has approved of any product or service offered by the door-to-door sales business.

B. Any school sponsored group, scout group, or fund raising group selling for the benefit of its organization must provide group members with an identification card, signed by an official of the organization with the organization's official telephone number affixed for verification purposes. Subsections R610-2-4.A.3. through R610-2-4.A.10. shall apply to these groups and the minor participants.

C. Nothing contained in Subsections R610-2-4.A. and R610-2-4.B. shall apply to nonprofit groups where the individual selling for the group is a true volunteer and there is no intention, understanding, expectation, agreement, or representation that the individual selling for the nonprofit group will receive any individual compensation or reimbursement for the sale.

D. Nothing in Subsections R610-2-4.A. and R610-2-4.B. shall prohibit or abridge the right of a minor to deliver, sell, or solicit subscriptions for newspapers or other regularly printed material door-to-door when the minor is a news carrier of the newspaper or other regularly printed material and delivers them to an established readership for consideration.

R610-2-5. Written Authorization.

Minors seeking employment in occupations where authorization is required by the Commission as set forth in Sections 34-23-201 and 34-23-207(4), shall file a written request for authorization. Requests for authorization shall be made in writing and provide the name of the minor, his or her address, telephone number, date of birth, the name and address of the parent or guardian approving of the employment, and specify any related training completed or in progress. The name of the prospective employer, the address and telephone number, the name and title of the employer's representative, the type of business, the specific duties of the minor, and the specific equipment or machinery the minor would be allowed to operate or repair shall also be provided in sufficient detail to allow a decision regarding the request for authorization. The Division shall review all requests for authorization and may issue authorization signed by the Division Director where appropriate, but shall in such cases determine and establish the hours and conditions of labor and employment for such authorization.

R610-2-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve an alleged violation of Utah statutes or rules regarding employment of minors is accomplished by the filing of a complaint or by a notice of agency action filed by the Division at its discretion.

A. The alleged violation shall be filed in writing by the complainant or an authorized representative of the complainant on a form provided by the Division. The complaint form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Subsection 63G-4-201(2). The complaint shall include the complainant's name and address, the defendant's name and address, a brief and concise statement of the complaint or allegation, and the complainant's or his authorized representative's signature.

1. Upon receipt of a complaint, the Division shall enter its receipt and assign a complaint number.

2. The Division may telephone the Defendant and attempt to resolve the complaint.

3. When a rapid resolution is not effected, the Division shall mail a copy of the complaint and a blank answer form together with an accompanying agency cover letter.

4. The Defendant shall have ten working days from the date of the letter to submit an answer to such complaint.

5. The Defendant's answer shall be mailed to the Complainant who may submit an answer within ten working days.

6. Upon receiving a third complaint against an employer within a 12 month period, the Division shall invoke the penalty provision pursuant to Section 34-23-402, and notify the Defendant of the penalty at the time of notice under Subsection A.3.

B. The Division may at its discretion bring an agency action to determine any violation of any statute or rule pertaining to employment of minors, or any appropriate

penalties, wages, or other enforcement relief. Commencement of an adjudicative proceeding is accomplished by a notice of agency action filed by the Division.

C. An adjudicative proceeding initiated pursuant to Subsection A. or B. is designated as an informal adjudicative proceeding and shall be conducted informally.

D. An informal adjudicative proceeding may be converted to a formal adjudicative proceeding pursuant to Subsection 63G-4-202(3).

R610-2-7. Default.

The presiding officer may enter an order of default against a party pursuant to Section 63G-4-209.

R610-2-8. Investigation.

For the purpose of determining the validity or invalidity of the filed complaint, the Division pursuant to Section 34-23-401, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the complaint;

C. Examine, copy, inspect, and summarize any relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the complaint;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make any and all relevant inquiries necessary in making a preliminary decision.

R610-2-9. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the complaint, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the complaint and state the findings based on the information contained in the file. When:

1. The complaint has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which must be complied with within ten working days from the date of the document.

2. The complaint has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the complaint is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. Any party may submit a request for review or request an informal hearing; such request must be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D precludes any such review or hearing.

R610-2-10. Order To Cease And Desist and Penalty.

A. A hearing officer may issue an Order To Cease And Desist the act of violation and may include an order of penalty based on the Preliminary Finding issued by the Division.

B. An Order To Cease And Desist the act of violation and an Order Of Penalty may be issued following an investigation and bypassing a Preliminary Finding where:

1. The act of violation is of such magnitude as to clearly exceed the standard of reasonable safeguards for a minor's health, safety, and education pursuant to Section 34-23-101.

2. The employer admits the violation has occurred or is occurring.

3. The employer failed to respond to the allegations of the complaint within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. Attorney fees, in addition to the Order To Cease And Desist and a penalty, if any, shall be allowed in accordance with Section 34-28-13.

D. After issuance of the Order To Cease And Desist, the only agency review available is that specified in Section R610-2-12.

R610-2-11. Hearings.

A. Pursuant to Subsection 63G-4-202(1), the Division may resolve the complaint for violation filed pursuant to Subsection R610-2-6.A., or an agency action commenced pursuant to Subsection R610-2-6.B. by holding an informal hearing subject to the provisions of Section 63G-4-203.

B. Where the Division deems appropriate, or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the complaint advising them of the time, date, and place of the hearing. Notice of hearing shall be mailed to the last known address on the Commission's record and shall constitute proper notice.

D. Any request for continuance or change in the scheduled hearing date or time must be made to the Division at least seven working days prior to the scheduled date and shall state the reason for the request. The hearing officer may grant or deny the request.

E. The hearing officer may at his or her option record any hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63G-4-203, and shall be promptly mailed to each of the parties. Attorney fees in addition to the Order and penalty, if any, may be allowed in all Orders. The Order issued may be:

1. An Order To Cease And Desist any act of violation and may include a penalty pursuant to Section 34-23-401.

2. An Order specifying appropriate penalties, wages or other enforcement relief.

3. An Order For Dismissal terminating proceedings on the complaint or agency action by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in Section R610-2-12.

R610-2-12. Agency Review.

A. After issuance of an Order To Cease And Desist or of a hearing officer's Order, the only agency review available to any party is a request for reconsideration as specified in Section 63G-4-302.

B. Reconsideration shall be based on the contents of the file. No new evidence will be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

R610-2-13. Judicial Review.

Judicial review of an Order To Cease And Desist or of a

hearing officer's Order are pursuant to Section 63G-4-402.

R610-2-14. Declaratory Orders.

As required by Section 63G-4-503, this rule provides the procedure 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.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Subsection 63G-4-503(6).

D. Administrative review of the Declaratory Order is per Section 63G-4-302, only.

R610-2-15. Enforcement.

A. Abstracts and docketing of Orders.

1. An abstract of the final Order shall be docketed by the Commission in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract must be noted thereon and entered in the judgment docket.

2. The docketing of such Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of any Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the defendant resides or conducts business shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-2-16. Mailing.

The Division shall send all mailings to the parties and attorneys of record by regular first class mail to the last known address in the Division's records.

R610-2-17. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

KEY: wages, minors, labor, time

March 24, 2008	**34-23-101 et seq.**
Notice of Continuation August 29, 2016	**34-28-1 et seq.**
	34-40-101 et seq.
	63G-4-102 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-3. Filing, Investigation, and Resolution of Wage Claims.
R610-3-1. Authority.

This rule is enacted under the authority of Sections 34-23-104, 34-28-9, 34-28-19 and 34-40-105.

R610-3-2. Definitions.

The following definitions are in addition to the statutory definitions specified in Sections 34-23-103, 34-28-2, and 34-40-102.

A. "Claim" means a properly completed Wage Claim Assignment Form, filed with the Division by a wage claimant.

B. "Claimant" means a person making a claim, as stated in subsection A.

C. "Commission" means the Labor Commission.

D. "Defendant" means a person against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and the personnel responsible for receiving, investigating and resolving claims.

G. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

H. "Hours employed" includes all time during which an employee is required to be working, to be on the employer's premises ready to work, to be on duty, to be at a prescribed work place, to attend a meeting or training, and for time utilized during established rest or break periods excluding meal periods of 30 minutes or more where the employee is relieved of all responsibilities.

I. "Mail" or "Mailed" means first class mailing sent to the parties of a wage claim or claim of retaliation, to the last known address on the Commission's record.

J. "Presiding Officer" includes those defended by Section 63G-4-103(1)(h)(i).

R610-3-3. Exceptions.

Public, general agricultural, household domestic, and certain other employments are excepted from the provisions of these rules pursuant to Section 34-28-1.

R610-3-4. Filing Procedure and Commencement of Agency Action.

A. For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve a claim for wages is accomplished by the wage claimant filing a wage claim assignment form. The wage claim assignment form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Section 63G-4-201(2).

B. An employee who is denied full payment of wages due or is affected or aggrieved by a violation of a statutory provision may file a claim with the Division on a form provided by the Division for that purpose.

1. Besides amounts due an employee for labor or services on a time, task, piece, commission, or other reasonable method of calculating the amount, wages also includes the following items, if due under an agreement with the employer or under a policy of the employer:

a. vacation;

b. holiday;

c. sick leave;

d. paid time off; and

e. severance payments and bonuses.

C. The claim shall include the Claimant's name and address, the Defendant's name and address, a brief and concise statement of the claims, complaints, or allegations, the amount of money which is alleged to be due the Claimant and the Claimant's signature or the signature of the Claimant's authorized representative.

D. Upon receipt of a claim, the Division shall enter its receipt and assign a claim number.

E. The Division may telephone the Defendant and attempt to resolve the claim.

F. When a rapid resolution is not effected, the Division shall mail to the Defendant a copy of the claim and a blank answer form together with an accompanying agency cover letter.

G. The Defendant shall have ten working days from the date of the letter to submit an answer to the claim.

H. Where the Defendant concedes the validity of the claim, the Defendant may pay or otherwise satisfy the claim within ten working days from the date of the letter without being subject to a penalty, under Section 34-28-9(2).

1. As an exception to Subsection H, defendants that are repeat offenders by having more than two wage claims filed against them within a running year, which claims are determined by the Division to be valid and to not have resulted from the same facts or circumstances, shall be subject to a penalty in accordance with Section 34-28-9(2).

I. The Division shall by mail provide a copy of the defendant's answer to the claimant. The claimant shall have ten working days from the date of the letter to submit a rebuttal, if any.

R610-3-5. Investigation.

For the purpose of determining the validity or invalidity of the filed claim, the Division pursuant to Sections 34-28-9 and 34-28-10, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the claim;

C. Examine, copy, inspect, and summarize relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the claim;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make relevant inquiries necessary in making a preliminary decision.

R610-3-6. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the claim, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the claim and state the findings based on the information contained in the wage claim file.

1. If the claim has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which shall be complied with within ten working days from the date of the document.

2. If the claim has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the claim is being dismissed.

C. Preliminary Findings shall be mailed to the parties

and any attorney of record.

D. A party may submit a request for review or request an informal hearing. This request shall be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D. precludes a review or hearing.

R610-3-7. Default Order.

A. A hearing officer may issue an Order On Default And Order To Pay based on the Preliminary Finding issued by the Division.

B. An Order On Default And Order To Pay may be issued following an investigation and bypassing a Preliminary Finding if any of the following occur:

1. The Claimant is issued a non-negotiable check in the payment of wages in violation of Section 34-28-3(2).

2. The Defendant admits the validity of the claim.

3. The Defendant failed to respond to the allegations of the claim within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. The penalty provided for by Section 34-28-9(2) may be awarded in addition to the award for wages.

D. After issuance of the Order On Default And Order To Pay, the only agency review available is that specified in R610-3-11.

R610-3-8. Agreements and Settlements.

A. No provision of Title 34, Chapter 28, can be contravened by a mutual agreement between an employee and employer unless the agreement is approved by the Division.

B. Notice of settlement conference shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the conference. A continuance shall only be granted for good cause, at the option of the hearing officer.

C. In the event of settlement the parties shall sign a settlement agreement stating the terms of the settlement, and shall include:

1. A stipulation that in the event of breach of the agreement the Division may enter an Order enforcing the settlement agreement; and

2. Approval of the settlement agreement by a representative designated by the Division.

R610-3-9. Hearings.

A. Pursuant to Section 63G-4-202(1), the Division may resolve the claim for wages filed pursuant to R610-3-4 by holding an informal hearing subject to the provisions of Section 63-46b-5. This hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

B. Where the Division deems appropriate or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the hearing and shall specify if the hearing is an informal or a formal proceeding. Notice of hearing shall be mailed and shall constitute proper notice.

D. A continuance shall only be granted for good cause at the option of the hearing officer.

E. The hearing officer may at his or her option record a hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63G-4-203, and shall be promptly mailed to each of the parties. The Order issued may be:

1. An Order awarding payment to the Claimant and may include a penalty pursuant to Section 34-28-9(2), in addition to the wages determined due.

2. An Order For Dismissal terminating proceedings on the wage claim by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in R610-3-11.

R610-3-10. Attorney Fees.

A. Pursuant to Section 34-28-9(4)(b), attorney fees and costs shall be allowed to counsel employed by the commission, the attorney general or the county representing the commission in appeals when the plaintiff prevails and in judgment enforcement proceedings. Attorney fees shall be allowed in the amount of $500 or one-third of the award, whichever is greater.

R610-3-11. Agency Review.

A. After issuance of an Order On Default And Order To Pay or of a hearing officer's Order, the only agency review available to a party is a request for reconsideration as specified in Section 63G-4-302.

B. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

R610-3-12. Judicial Review.

Judicial review of a wage claim Order is pursuant to Section 63G-4-402.

R610-3-13. Declaratory Orders.

As required by Section 63G-4-503, this rule provides the procedure 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.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the

petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Section 63G-4-503(6).

D. Administrative review of the Declaratory Order is per Section 63G-4-302, only.

R610-3-14. Enforcement.

A. Docketing of Order or final agency action as a lien.

1. An abstract of the final Order shall be docketed by the Division in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract shall be noted thereon and entered in the judgment docket pursuant to Section 34-28-9(3)(a), (b), and (c).

2. The docketing of an Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of an Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the plaintiff or the defendant resides, depending on the district in which the final Order is docketed, shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-3-15. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing a period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing shall be allowed.

R610-3-16. Retaliation.

A. Section 34-28-19 prohibits an employer from retaliating against employees. Claims of unlawful retaliation shall be resolved as follows:

1. An employee alleging retaliatory action by his employer may file a complaint with the Division. The Division shall mail a copy of the complaint to the employer and allow ten working days for the employer to submit a written response to the complaint. Additionally, the Division may attempt to resolve the complaint by informal means.

2. After the time allowed for response and if informal resolution has been unsuccessful, the Division shall conduct a hearing to determine whether the employer has violated Section 34-28-19 by retaliating against the employee. The Division's determination shall be mailed to each party.

a. If the Division determines that no retaliation has occurred, it shall dismiss the employee's complaint.

b. If the Division determines retaliation has occurred, it shall order the employer to end the retaliatory action and reimburse the employee for lost wages and benefits.

B. Right of Appeal:

1. The only agency review available to any party is a request for reconsideration as specified in Section 63G-4-302.

2. Reconsideration shall be based on the contents of the file and submitted within 20 days of the date of the issued order. No new evidence will be accepted.

3. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302 (3).

4. Judicial review of the order may be pursued as specified in Section 63G-4-402.

C. The Division may enforce any final order as provided in Section 34-28-9(3) and (4).

R610-3-17. Bankruptcy.

In the event the defendant files a petition with the U.S. Bankruptcy Court, the Division shall suspend its administrative action until the bankruptcy case is concluded or dismissed.

R610-3-18. Deductions and Offsets.

The following sums shall constitute lawful deductions or offsets from wages due an employee:

A. Sums deducted from wages pursuant to the Internal Revenue Code or other Federal tax provision;

B. Sums deducted from wages pursuant to the Social Security Administration Act and Federal Insurance Contribution Act;

C. Sums deducted from wages pursuant to any Utah city, county, or state tax;

D. Sums deducted from wages as dues, contributions, or other fees to a labor, employee, professional, or other employer-related organization or association; and sums as contributions for an employee's participation or eligibility in a health, welfare, insurance, retirement, or other benefit plan or program, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

E. Sums deducted from wages as payments, repayments, contributions, deposits, to a credit union, banking, savings, loan, trust or other financial institution, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

F. Sums deducted from wages as payment for the purchase of goods or services by the employee from the employer, provided that the:

1. Employee has actual or constructive possession of the goods or services purchased; and

2. Employee's purchase is evidenced by the employee's written acknowledgment;

G. Sums deducted from wages for damages suffered by the employer due to the employee's negligence:

1. A potential deduction shall meet the following pre-conditions:

a. negligence and damages arise out of the course of

employment;

b. employer has not received payments, compensation, or any form of restitution for the same monetary loss from an insurer, assurer, surety, or guarantor to cover the injuries, losses, or damages;

c. offset is reasonably related to the amount of the damage; and

d. damage is over and above wear and tear reasonably expected in the normal course of business.

2. Methods of determining an employee's negligence and amount of damage are:

a. by a judicial proceeding;

b. by an employer's written and published procedures coupled with an employee's express authorization for the deduction in writing; or

c. by any other provision allowed or required by law pursuant to Section 34-28-3(5).

H. Sums deducted from wages, in the proper amounts, for enforcement of a valid attachment or garnishment shall be honored by the Division;

I. Sums deducted from wages as repayment to the employer by the employee of advances or loans made to the employee by the employer, provided that the:

1. Advance or loan to the employee occurred while the employee was in the employ of the employer; and

2. Employee's receipt of the advance or loan is evidenced by the employee's written acknowledgment;

J. Sums deducted from wages as a result of loss or damage occurring from the criminal conduct of the employee against the property of the employer, provided that:

1. The employee has been adjudged guilty by a judicial proceeding of the specified crime committed against the property of the employer;

2. The crime occurred during the employment relationship or out of the employment relationship; and

3. The property of the employer cannot or has not been reunited with the employer; or

4. The employee willfully and through his own admission did in fact destroy company property. An offset against the earned wages may be allowed at the hearing officer's discretion.

K. Sums deducted from the wages resulting from cash shortages, provided that the:

1. Employee gives written acknowledgment upon beginning employment that he or she shall be responsible for shortages;

2. Employee shall at the beginning of his or her work period be checked in or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification;

3. Employee at the end of the work period be checked out or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification; and

4. Employee be the sole and absolute user and have sole access to the register or cash amount from the time checked in under Subsection (2) until the time checked out under Subsection (3);

L. Sums deducted from wages as payment for the purchase of goods, tools, equipment, or other items required for the employment of a person, provided that the:

1. Employee's purchase and receipt of the items is evidenced by a written acknowledgment;

2. Employee has actual or constructive possession of the goods or items; and

3. Employer repurchase the items from the employee at the employee's option upon the termination of employment at a fair and reasonable price;

M. Sums deducted from wages as payment for goods, tools, equipment, or other items furnished and assigned to the employee by the employer, provided that:

1. The item was assigned during the employment of the employee;

2. The employee gave written acknowledgment of the receipt of the item; and

3. The item was not returned to the employer upon termination.

R610-3-19. Timely and Unconditional Payment of Wages.

A. In case of a dispute over wages, the employer shall give written notice to the employee, of the amount of wages which he concedes to be due and shall pay that amount without condition within the time required by statute;

B. Acceptance by the employee of a payment made hereunder shall not constitute a release or waiver as to the balance of a claim for wages;

C. The employer shall not be entitled or permitted to deduct any sums where the employer has failed to make payment of wages within the time period required by statute.

R610-3-20. Check Stubs.

All lawful offsets enumerated in this rule shall be itemized on a statement or a detachable check stub and provided to the employee as required by Section 34-28-3(4).

R610-3-22. Payment of Wages Via Pay Cards.

A pay card is a stored value card that can be used at an ATM-type machine to access wages that are credited to the card. An employer may use a pay card to pay an employee's wages if the following conditions are met:

A. With one use, the employee shall be able to withdraw the full amount of earned wages without incurring a fee. "One use" means a single transaction.

B. The full amount of wages for a pay period shall be available for the employee via the pay card on the applicable payday.

C. On each payday, the employer shall provide the employee a statement of deductions from the employee's gross wages for the subject pay period. This statement shall be provided:

1. in writing, or

2. electronically, provided that the employee must be able to easily and immediately access the information and print a paper copy of the same, without cost.

KEY: wages, minors, labor, time

April 16, 2012	**34-23-101 et seq.**
Notice of Continuation August 29, 2016	**34-28-1 et seq.**
	34-40-101 et seq.
	63G-4-102 et seq.

R616. Labor Commission, Boiler and Elevator Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code -- 2015.

1. Section I Rules for Construction of Power Boilers.

2. Section IV Rules for Construction of Heating Boilers.

3. Section VIII Rules for Construction of Pressure Vessels.

B. Power Piping ASME B31.1 -- 2014.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-2015. Except:

1. Part CG-130(c).

D. National Board Inspection Code ANSI/NB-23 -- 2015 Part 3.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2015.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Tenth Edition, 2014. Except:

1. Section-8, and

2. Appendix-A.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. For boilers or pressure vessels inspected by an inspector employed by the Division, the owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. For boilers or pressure vessels inspected by a deputy inspector employed by an insurance company, the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located is subject to the agreement between the insurance company and the owner or operator of the boiler or pressure vessel. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(2)(a) and 63G-4-201(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

R616-2-15. Deputy Boiler/Pressure Vessel Inspectors.

A. Purpose -- Section 34A-7-10 of the Safety Act ("the Act"; Title 34A, Chapter 7, Part One, Utah Code Annotated) permits the Division of Boiler, Elevator and Coal Mine Safety ("the Division") to authorize qualified individuals to inspect boilers and pressure vessels as "deputy inspectors." This rule sets forth the Division's procedures and standards for authorizing deputy inspectors, monitoring their performance, and suspending or revoking such authority when appropriate.

B. Initial appointment of deputy inspectors.

1. An applicant for initial Division authorization to inspect boilers and pressure vessels as a deputy inspector must satisfy the following requirements in the order listed below:

a. A company insuring boilers and pressure vessels in Utah ("sponsoring employer" hereafter) must submit a letter to the Division certifying that:

i. the applicant is employed by the sponsoring employer; and

ii. the sponsoring employer requests the Division authorize the applicant to inspect boilers and pressure vessels insured by that employer;

b. The applicant or sponsoring employer must submit to the Division a current, valid certification from the National Board of Boiler and Pressure Vessel Certification ("National Board") that the applicant is qualified to inspect boilers and pressure vessels;

c. The applicant or sponsoring employer must submit an application fee of $25 to the Division;

d. The applicant must complete training for deputy inspectors provided by the Division;

e. The applicant must pass an oral examination administered by the Division pertaining to boiler and pressure vessel inspection standards and processes; and

f. The applicant must pass a written, closed-book examination administered by the Division on the Division's boiler/Pressure Vessel Compliance Manual, Rules, and codes adopted;

2. Upon successful completion of the foregoing requirements, the Division will appoint the applicant as a deputy inspector and will issue credentials to that effect. The Division will also notify the sponsoring employer of the appointment.

3. Initial appointment as a deputy inspector terminates at the end of the calendar year in which such appointment is made unless a deputy inspector qualifies for reappointment under paragraph C of this rule.

C. Annual reappointment of deputy inspectors.

1. Effective January 1 of each year, the Division will renew the appointment of each deputy inspector for an additional year if the inspector satisfies the following requirements:

a. The individual was authorized to serve as a deputy inspector as of December 31 of the previous year;

b. A sponsoring employer has submitted a letter to the Division certifying that:

i. the individual is employed by the sponsoring employer; and

ii. The sponsoring employer requests the Division to reappoint that individual as a deputy inspector to inspect boilers and pressure vessels for that employer;

c. The individual or sponsoring employer has submitted to the Division a current, valid certification from the National Board establishing that the individual is qualified as a boiler and pressure vessel inspector;

d. The individual or sponsoring employer has submitted to the Division the required renewal fee of $20;

e. The individual has completed the Division's required training for deputy inspectors.

2. An individual who does not meet each of the foregoing requirements is not eligible for reappointment as a deputy inspector and must instead meet each of the requirements for initial appointment under paragraph B of this rule.

D. Lapse, change of employment and loss of National Board certification.

1. Lapse. An individual's appointment as a deputy inspector will lapse if the individual:

a. Does not renew the appointment by satisfying the requirements of paragraph C of this rule;

b. Does not perform and submit to the Division at least one boiler or pressure vessel inspection during the previous calendar year; or

c. Fails to inform the Division of any change in status of employment with his or her sponsoring employer as required in the following paragraph D.2. of this rule.

2. Change in employment.

a. A deputy inspector must immediately notify the Division in writing of any change in the status of the inspector's employment with his or her sponsoring employer.

b. If the Division determines that an individual previously appointed as a deputy inspector is no longer employed by a company authorized to insure boilers and pressure vessels in Utah, the Division will immediately revoke that individual's appointment.

c. If the Division determines that a deputy inspector has changed employment to another company that insures boilers and pressure vessels in Utah, the Division will require the new employer or deputy inspector to submit the following:

i. A letter from the new employer:

AA. certifying that the individual is employed by that sponsoring employer; and

BB. requesting that the individual's appointment as a deputy inspector be continued;

ii. A current, valid certification as a boiler/pressure vessel inspector from the National Board; and

iii. Payment to the Division of the required fee of $20.

3. National Board Certification.

a. Every deputy inspector shall at all times hold a current valid certification as a boiler/pressure vessel inspector from the National Board.

b. Each deputy inspector shall immediately notify the Division if his or her National Board certification has been revoked or suspended.

c. If the Division has reason to believe that a deputy inspector's National Board certification has been revoked or suspended, the Division will obtain written verification from the National Board. IF the National Board has in fact revoked or suspended the deputy inspector's certification, the Division will revoke the inspector's appointment as a deputy inspector.

E. Scope of authority. Appointment as a deputy inspector has the limited effect of authorizing the deputy inspector to inspect boilers and pressure vessels insured by his or her sponsoring employer for compliance with engineering codes and other standards adopted by the Division in Utah Administrative Code Rule R616-2. The Division expressly does not confer any other authority to deputy inspectors. Deputy inspectors remain employees of their respective sponsoring employers and are not employees of the Division or agents of the Division for any other purpose. A deputy inspector's right to inspect any particular boiler or pressure vessel, including the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located, is subject to the agreement between the sponsoring employers and the owner or operator of the boiler or pressure vessel. Appointment as a deputy inspector by the Division does not confer any right of entry independent from the terms of such agreement.

F. Inspection Standards

1. In inspecting any boiler or pressure vessel, a deputy inspector shall apply the standards and engineering codes adopted in Utah Administrative Code R616-2 - Boiler and Pressure Vessel Rules.

2. Each deputy inspector must use the Division's web-based applications to accurately record and submit all information regarding boilers and pressure vessels, including;

a. inspection reports;

b. scrapped and inactive items;

c. information changes other than those requiring submission of a Change of Insurance Status Form (NB4); and

d. a Web Issue Form (Form WIF-01) to identify any error or other issue resulting from the deputy inspector's use of the Division's web-based applications.

G. Quality Control. The Division will evaluate the performance of each deputy inspector to assure compliance with the Division's standards for boiler and pressure vessel inspections.

1. The Division's Business Analyst will review each inspection report submitted by a deputy inspector and will report any serious errors to the Chief Boiler and Pressure Vessel Inspector ("Chief Inspector") for appropriate action.

2. Each year, the Chief Inspector will evaluate a sample of each deputy inspector's inspections performed during that year for compliance with Division standards.

3. In addition to the reviews undertaken pursuant to paragraph G.2. of this rule, the Chief Inspector will also investigate any observation or report of an inspection deficiency to determine whether the deputy inspector complied with Division standards and rules in performing and reporting the inspection.

H. Corrective Action, Revocation and Right to Hearing.

1. If the Chief Inspector concludes that a deputy inspector does not satisfy requirements of this rule for continued appointment as a deputy inspector or has performed an inspection in a manner that is inconsistent with Division standards, the Chief Inspector will submit a written report and may recommend corrective action to the Division Director.

2. Depending on the circumstances and the seriousness of the situation, corrective action may include;

a. warning letter;

b. requirements for additional training;

c. requirements for retesting;

d. request review by the National Board;

e. additional supervision; and

f. revocation of appointment as a deputy inspector.

3. The Division Director shall forward a copy of the Chief Inspector's written report and any recommendation for corrective action to the deputy inspector and the sponsoring employer. If the deputy inspector or sponsoring employer dispute the report or recommended corrective action, the Division Director shall schedule time and place to conduct a hearing on the matter, such hearing to be conducted as an informal adjudicative proceeding under the Utah Administrative Procedures Act. After conducting such hearing, the Division Director will issue a written decision setting forth the material facts and ordering appropriate corrective action, if any. The Division Director shall forward a copy of the decision to the deputy inspector, sponsoring employer, and the National Board.

4. If the deputy inspector or sponsoring employer is dissatisfied with the Division Director's decision, the inspector or sponsoring employer may seek judicial review as provided by the Utah Administrative Procedures Act.

KEY: boilers, certification, safety
July 1, 2016 **34A-7-101 et seq.**
Notice of Continuation August 23, 2016

R616. Labor Commission, Boiler and Elevator Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1-2013/CSA B44-10, Safety Code for Elevators and Escalators, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every two years. New issues become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2015 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler and Elevator Safety.

C. ASME A90.1-2015, Safety Standard for Belt Manlifts.

D. ANSI A10.4-2016, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. ICC/ANSI A117.1 (2009) Accessible and Usable Buildings and Facilities, sections 407 and 408, and 410 approved October 20, 2010.

F. ASME A18.1-2014 Safety Standard For Platform Lifts And Stairway Chairlifts.

G. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must have a current certification as a Qualified Elevator Inspector as outlined in ASME QEI-1, Qualifications for Elevator Inspectors.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the International Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-6.A. may request a safety inspection by Division of Boiler and Elevator Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be

directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

B. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A18.1 3.1.2.3 shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.

C. For newly installed hydraulic elevators that do incorporate a safety valve:

1. Where piping is protected by the safety valve, schedule 40 piping may be used;

2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;

3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in 2.8.2.3.2 of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

Hoistway ventilation as outlined in the International Building Code is under the jurisdiction of the local building official.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of A17.1 and A17.3 in effect at the time the remodeling of the elevator commences.

B. When a hydraulic elevator has been remodeled it is considered a new installation.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63J-1-303 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a

permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(3)(a) and 63G-4-201(3)(b).

R616-3-20. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Subsection 63G-4-202(3).

KEY: elevators, certification, safety
July 1, 2016 34A-1-101 et seq.
Notice of Continuation August 23, 2016

R642. Natural Resources; Oil, Gas and Mining; Administration.
R642-100. Records of the Division and Board of Oil, Gas and Mining.
R642-100-100. Responsibility and Authority.

110. Authority for the R642-100 rules is found in the Government Records Access and Management Act (GRAMA) (U.C.A. 63G-2-101, et seq.)

120. The Utah Division and Board of Oil, Gas and Mining ("Division" and "Board") will be considered as an agency for the purposes of the GRAMA.

130. The Director of the Division of Oil, Gas and Mining ("Director") will be considered to be the Agency Head for the purposes of activities under the GRAMA.

140. The Division and Board maintain an office at 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801.

R642-100-200. Requests for Records.

210. Records may be requested by any person desiring access to Division or Board records.

220. Requests will be submitted in writing to the Administrative Assistant to the Director and Secretary to the Board.

230. All requests will be made at the Division office address listed in R642-100-140 in person during regular office hours or through the U.S. Mail and will be set forth with reasonable specificity:

231. The name of the record requested;

232. The date the record was made;

233. The form in which the record is needed, and;

234. The name and address and daytime phone number of the requester.

240. Forms are available at the Division to make records requests.

R642-100-300. Fees for Records.

310. The Division and Board of Oil, Gas and Mining will charge fees to supply records to all requestors, except as provided in R642-100-400 and R642-100-700.

320. Fees for records will reflect direct and indirect costs incurred by the Division and Board and will follow any policy guidance of the Division of Finance, Department of Administrative Services. The Division and Board may require payment of past fees and future estimated fees before processing a request if fees are expected to exceed $50.00, or if a requester has not paid fees from previous requests.

330. Fees will be reasonable and at a minimum, enable the Division and Board to obtain its actual cost of duplicating, compiling, or retrieving records from archival storage.

340. When a record is requested for inspection or review by a requester within the Division offices and no extraordinary efforts are made by the Division or Board in compiling or retrieving the record, no fee will be assessed to the requester.

R642-100-400. Waiver of Fees for Records.

410. Under the Government Records Access and Management Act (GRAMA) (U.C.A. 63G-2-101 et seq.), fees may be waived by the Director under any of the following circumstances:

411. When release of the record, in the opinion of the Director, benefits the public interest;

412. If the individual making the records request is the subject of a record and access is not otherwise restricted under U.C.A. 63G-2-101 et seq.

413. If the requestor is an individual specified in Section 63G-2-202(1) or (2), or

414. If the requester's rights are directly implicated by a record and he or she is impecunious.

420. Requests for a waiver of fees will be made in writing to the Director and will set forth the reasons why a requester desires a waiver of fees. The Director may delegate the authority to waive fees.

R642-100-500. Classification and Release of Records and Exceptions.

510. Records of the Division and Board will be classified and released in accordance with the Government Records Access and Management Act (GRAMA).

520. All records of the Division and Board which are not public as described in the GRAMA will be maintained as having restricted access as authorized under the GRAMA.

530. Any person denied access to a record of the Division or Board under the procedures outlined in GRAMA has the opportunity to appeal to the Director for more liberal access to a particular record. Appeals will be in writing and include:

531. A description of the record requested;

532. An explanation of how the release of the record would serve the interest of the public and how, in the appellant's opinion, the public's interest outweighs the privacy interests of restricted access.

533. The identity of the requester and an address where he or she may be contacted.

540. The Division will share its records with other agencies on a case-by-case basis in consideration of applicable laws.

R642-100-600. Responses to Requests for Records.

610. Responses to requests for records by the Division will be in writing and will be performed in accordance with the provisions of the Government Records Access and Management Act (GRAMA), U.C.A. 63G-2-101 et seq.

620. The Division and Board may respond to requests for information by means of prepared forms.

630. Rule 6 of the Utah Rules of Civil Procedure will apply to calculate time periods specified in GRAMA.

R642-100-700. Official Transcripts of Division and Board Proceedings.

710. The right to copy verbatim transcripts of Board and Division proceedings prepared by a Certified Court Reporter will be considered to be the property of the Reporter.

720. Unless otherwise classified as eligible for a more restricted classification by the Board or Division, all official transcripts will be considered as public records which are open for inspection or review in the Division offices at the address listed in R642-100-140.

730. Persons desiring copies of the official transcripts of the Board and Division proceedings will be provided with the name and address of the court reporter.

KEY: public records
1994 63G-2-101 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-870. Abandoned Mine Reclamation Regulation Definitions.
R643-870-500. Definitions as Used in R643-870 through R643-886.

"Abandoned Mine Reclamation Account" or "Account" means an account created in the general fund which is established for the purpose of providing monies to administer the abandoned mine reclamation program.

"Act" means Title 40, Chapter 10, Utah Code Annotated, known as Regulation of Coal Mining and Reclamation Operations.

"Director" means the Director of the Office of Surface Mining Reclamation and Enforcement.

"Division" means the Division of Oil, Gas and Mining.

"Eligible lands and water" means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. Provided, however, that lands and water damaged by coal mining operations after that date may also be eligible if they meet the requirements specified in R643-874-124 and R643-874-125. For additional eligibility requirements for water projects, see R643-874-140. For additional eligibility requirements for lands affected by remining operations see R643-874-128. For eligibility requirements for lands affected by mining for minerals other than coal, see R643-875-140.

"Emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

"Expended" means that moneys have been obligated, encumbered, or committed by contract by the Division for work to be accomplished or services to be rendered.

"Extreme danger" means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

"Left or abandoned in either an unreclaimed or inadequately reclaimed condition" means lands and water:

(a) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977,and on which all mining has ceased;

(b) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal Laws, except as provided in R643-874-124 and R643-874-142.

"Office" or "OSM" means the Federal Office of Surface Mining Reclamation and Enforcement.

"Owner" means the owner of real property who is shown to be the owner of record on the plats located in the county courthouse of the county in which the real property is located.

"Permanent facility" means any structure that is built, installed, or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

"Project" means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a state or within a logical, geographically defined area, such as a watershed or conservation district.

"Reclamation activity" means the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining.

"Reclamation Plan" means a plan submitted by the Division and approved by the Office of Surface Mining Reclamation and Enforcement.

"Reclamation Program" means the program established by the Division in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

"Secretary" means the Secretary of the Department of Interior or his or her representative.

KEY: mines, reclamation
December 16, 1997 40-10-1 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-872. Abandoned Mine Reclamation Fund.
R643-872-100. Scope.

The rules under R643-872 set forth general responsibilities for administration of Abandoned Mine Land Reclamation Programs and procedures for the Abandoned Mine Reclamation Fund to finance such programs.

120. Abandoned Mine Reclamation Fund.

121. A Fund known as the Abandoned Mine Reclamation Fund is established under the authority of Section 40-10-25.1 for the purpose of providing moneys to administer the Abandoned Mine Reclamation Program. This Fund will be managed in accordance with the Federal Office of Management and Budget Circular No. A-102 and applicable state guidelines.

KEY: mines, reclamation
1994 40-10-1 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-874. General Reclamation Requirements.
R643-874-100. Scope.

The rules under R643-874 establish land and water eligibility requirements, reclamation objectives and priorities, and reclamation contractor responsibility.

110. Applicability. The provisions of R643-874 apply to all reclamation projects carried out with monies from the Account.

120. Eligible Lands and Water. Lands and water are eligible for reclamation activities if:

121. They were mined or affected by mining processes;

122. They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

123. There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government, or the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Account may be sought.

124. Notwithstanding paragraphs 120, 121, 122, and 123 of this section, coal lands and waters damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Division finds in writing that:

124.100. They were mined for coal or affected by coal mining processes; and

124.200. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and:

124.210. January 21, 1981, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

124.220. November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

124.300. The site qualifies as a priority 1 or 2 site pursuant to Section 40-10-25(2)(a) and (b) of the Act. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

125. The Reclamation Program may expend funds made available under Sections 40-10-25.1(2) and (3) of the Act for reclamation and abatement of any site eligible under paragraph 124 of this section, if the Reclamation Program, with the concurrence of the Secretary, makes the findings required in paragraph 124 of this section and the Reclamation Program determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to paragraphs 120, 121, 122, or 123 of this section that qualify as a priority 1 or 2 site under Section 40-10-25(2) of the Act.

126. With respect to lands eligible pursuant to paragraph 124 or 125 of this section, monies available from sources outside the Account or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Account if not required for further reclamation activities at the permitted site.

127. If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Reclamation Program, the permittee of the site shall reimburse the Account for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor the State performing reclamation under paragraph 124 or 125 of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in the Coal Regulatory portion of the Act (Section 40-10-1 et seq.) nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in the Coal Regulatory portion of the Act (Section 40-10-1 et seq.).

128. Surface coal mining operations on lands eligible for remining pursuant to Section 40-10-25(6) of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by R645-301-800. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the director of the Division shall immediately exercise his/her authority under Section 40-10-25(6)(c) of the Act.

130. Reclamation Objectives and Priorities.

131. Reclamation projects should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

132. Reclamation projects shall reflect the priorities of Section 40-10-25(2) of the Act. Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects."

140. Utilities and other facilities.

141. The Reclamation Program, prior to certification of the completion of all coal-related reclamation under Section 40-10-28.1 of the Act, may expend up to 30 percent of the funds granted annually pursuant to Section 40-10-25(1) of the Act for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

142. If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in R643-874-122, if the Reclamation Program finds in writing, as part of its eligibility opinion, that such adverse effects are due predominantly to effects of mining processes undertaken and abandoned prior to August 3, 1977.

143. If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria set forth under Section 40-10-25(4) of the Act, the project shall remain eligible, notwithstanding the criteria specified in R643-874-122, if the Reclamation Program finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the effects of mining processes undertaken and abandoned prior to those dates.

144. Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

150. Limited liability. The State shall not be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

160. Contractor responsibility. Every successful bidder for a Reclamation Program contract must be eligible under federal regulation 30 CFR 773.12 through 773.14 at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's automated Applicant/Violator System for each contract to be awarded.

KEY: mines, reclamation
November 1, 1997 40-10-1 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-875. Noncoal Reclamation.
R643-875-100. Scope.

The rules under R643-875 establish land and water eligibility requirements for noncoal reclamation.

120. Eligible lands and water prior to certification. Noncoal lands and water are eligible for reclamation if:

121. They were mined or affected by mining processes;

122. They were mined and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977;

123. There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the state or federal government or by the state as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, monies sufficient to complete the reclamation may be sought under R643-886 or R643-888;

124. The reclamation has been requested by the Governor; and

125. The reclamation is necessary to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices.

130. Certification of completion of coal sites.

131. The Governor may submit to the Secretary a certification of completion expressing the finding that the Reclamation Program has achieved all existing known coal-related reclamation objectives for eligible lands and waters pursuant to Section 40-10-25(3) of the Act, or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion shall contain:

131.100. A description of both the rationale and the process utilized to arrive at the above finding for the completion of all coal-related reclamation pursuant to Section 40-10-25(2) of the Act.

131.200. A brief summary and resolution of all relevant public comments concerning coal-related impacts, problems, and reclamation projects received by the Reclamation Program prior to preparation of the certification of completion.

131.300. A Reclamation Program agreement to acknowledge and give top priority to any coal-related problem(s) that may be found or occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program.

132. After review and verification of the certification, the Director will provide notice in the Federal Register and opportunity for public comment. After evaluation, the Director will concur with the certification and provide final notice in the Federal Register.

133. Following concurrence by the Director, the Reclamation Program may implement a noncoal reclamation program pursuant to provisions in Section 40-10-28.1 of the Act.

140. Eligible lands and water subsequent to certification.

141. Following certification by the Reclamation Program of the completion of all known coal projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities shall be those-

141.100. Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date, the applicable date shall be August 28, 1974, and November 26, 1980, respectively; and

141.200. For which there is no continuing reclamation responsibility under State or other Federal laws.

142. If eligible coal problems are found or occur after certification under R643-875-130, the Reclamation Program must address the coal problem utilizing State share funds no later than the next grant cycle, subject to the availability of funds distributed to the Reclamation Program in that cycle. The coal project would be subject to the coal provisions specified in Sections 40-10-25 through 40-10-28 of the Act.

150. Reclamation priorities for noncoal program.

151. This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

152. Following certification pursuant to R643-875-130, the projects and construction of public facilities identified in paragraph 151 of this section shall reflect the following priorities in the order stated:

152.100. The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices;

152.200. The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

152.300. The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

153. Enhancement of facilities or utilities shall include upgrading necessary to meet local, State, or Federal public health or safety requirements. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

154. Notwithstanding the requirements specified in paragraph 151 of this section, where the Governor, after determining that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in the State, submits a grant application as required by paragraph 154 of this section and the Director concurs in such need, as set forth in paragraph 155 of this section, then the Division may use annual grants made available under Section 40-10-25(1) of the Act to carry out such activities or construction.

155. To qualify for funding pursuant to the authority in paragraph 153 of this section, the Reclamation Program must submit a grant application that specifically sets forth:

155.100. The need or urgency for the activity or the construction of the public facility;

155.200. The expected impact the project will have on the coal or minerals industry in the State;

155.300. The availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

155.400. Documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency;

155.500. The impact on the State, the public, and the minerals industry if the activity or facility is not funded;

155.600. The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

155.700. An analysis and review of the procedures used by the Reclamation Program to notify and involve the public in this funding request and a copy of all comments received and their resolution by the Reclamation Program.

160. Exclusion of certain noncoal reclamation sites. Money from the Account shall not be used for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.) or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

170. Land acquisition authority-noncoal. The requirements specified in R643-877 (Rights of Entry) and R643-879 (Acquisition, Management and Disposition of Lands and Water) shall apply to the Reclamation Program's noncoal program except that, for purposes of this section, the references to "coal" shall not apply. In lieu of the term "coal", the word "noncoal" should be used.

180. Lien requirements. The lien requirements found in R643-882 (Reclamation on Private Land) shall apply to the Reclamation Program's noncoal reclamation program under Section 40-10-28.1 of the Act, except that for purposes of this section, references made to "coal" shall not apply. In lieu of the term "coal", the word "noncoal" should be used.

190. Limited liability. The State shall not be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved state abandoned mine reclamation program or plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the Reclamation Program. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

200. Contractor responsibility. Every successful bidder for a Reclamation Program contract must be eligible under federal regulation 30 CFR 773.12 through 773.14 at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's automated Applicant/Violator System for each contract to be awarded.

KEY: mines, reclamation
June 22, 1995 **40-10-1 et seq.**
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-877. Rights of Entry.
R643-877-100. Scope.

The rules under R643-877 establish procedures for entry upon lands or property by the Division for reclamation purposes.

110. Written Consent for Entry. Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsentual entry will be undertaken only after good faith efforts to obtain written consent have failed.

120. Entry for Studies or Exploration. The state or its agents, employees, or contractors, will have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

130. Entry and Consent to Reclaim.

131. The Division will take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent will be in the form of a signed statement by the owner of record or his authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement will not include any commitment by the state to perform reclamation work nor to compensate the owner for entry.

132. The Division will give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice will be in writing and will be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by R643-877. If the owner is not known, or if the current mailing address of the owner is not known, notice will be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper will include a statement of where the findings required by R643-877 may be inspected or obtained.

133. If consent is not obtained, then, prior to entry under R643-877, the Board will find in writing with supporting reasons that:

133.100. Land or water resources have been or may be adversely affected by past mining practices;

133.200. The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

133.300. The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for the Division, its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past mining practices.

140. Entry for Emergency Reclamation.

141. The Division, its agents, employees, or contractors will have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of mining practices and to do all things necessary to protect the public health, safety, or general welfare.

142. Prior to entry under R643-877, the Board will, after notice and hearing, make a finding of fact in accordance with Section 40-10-27 of the Act.

KEY: mines, mining law, reclamation
June 22, 1995 40-10-1 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-879. Acquisition, Management, and Disposition of Lands and Water.
R643-879-100. Scope.

The rules under R643-879 establish procedures for acquisition of eligible land and water resources for emergency and reclamation purposes by the Division under an approved Reclamation Program. It also provides for the management and disposition of lands acquired by the state and establishes requirements for the redeposit of proceeds from the use or sale of land.

110. Land Eligible for Acquisition.

111. Land adversely affected by past coal mining practices may be acquired with moneys from the Account by the Division if, after notice and hearing, the Board finds that acquisition is necessary for successful reclamation and that:

111.100. The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, and

111.200. Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

112. Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Account if, after notice and hearing, the Board finds that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Reclamation Program or that public ownership is desirable to meet an emergency situation and prevent recurrence of adverse effects of past coal mining practices.

113. Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of underground or surface mines may be acquired by the Division if the Board finds that acquisition is necessary under R643-874-120 or R643-875-120.

114. The Division will acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the lands, mineral rights, or associated water rights may be acquired if:

114.100. The customary practices and laws of the state will not allow severance of such interests from the surface estate; or

114.200. Such interests are necessary for the reclamation work planned or for the post-reclamation use of the land; and

114.300. Adequate written assurance cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

115. Title to all lands or interests in and acquired under R643-879 will be in the name of the state.

120. Procedures for Acquisition.

121. An appraisal of all land or interest in land to be acquired will be obtained by the Division. The appraisal will state the fair market value of the land as adversely affected by past mining and will otherwise conform to the requirements of the handbook on "Uniform Appraisal Standards for Federal Land Acquisition" (Interagency Land Acquisition Conference, 1973).

122. When practical, acquisition will be by purchase from a willing seller. The amount paid for interests acquired will reflect the fair market value of the interests as adversely affected by past mining.

123. When necessary, land or interest in land may be acquired by condemnation. Condemnation procedures will not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

124. The Division will comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, U.S.C. 4601, et seq., and 41 CFR Parts 114-50.

130. Acceptance of Gifts of Land.

131. The Division and/or the Board, under an approved Reclamation Plan, may accept donations of title to land or interests in land.

132. Offers to make a gift of land or interest in land will be in writing and comply with state regulations for donations.

140. Management of Acquired Land.

141. Land acquired under R645-879 may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the Board will be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area or the costs to the state for providing the benefit, whichever is appropriate. The fee may be waived if found in writing that such a waiver is in the public interest.

142. All use fees collected will be deposited in the Abandoned Mine Reclamation Account in accordance with R643-872.

150. Disposition of Reclaimed Land.

151. Prior to the disposition of any land acquired under R643-879, the Division will publish a notice of proposed land disposition, hold public hearings if requested, and make written findings in accordance with the authority contained in Section 40-10-27 of the Act.

152. The Division may transfer administrative responsibility for land acquired by the state to any state department or agency, with or without cost to the department or agency. The Division may transfer title for land acquired by the state to any agency or political subdivision of the state, with or without cost to that entity. The agreement under which a transfer is made will specify:

152.100. The purposes for which the land may be used, which will be consistent with the authorization under which the land was acquired; and

152.200. That the title or administrative responsibility for the land will revert to the Division if, at any time in the future, the Division finds that the land is not used for the purposes specified.

153. The Division and/or the Board may accept title for abandoned and unreclaimed land to be reclaimed and administered by the state. If the state transfers land to the United States under R643-879, the state will have a preference right to purchase such land after reclamation is completed. The price to be paid by the state will be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the state.

154. The Division may sell land acquired and reclaimed under R643-879 to the local government within whose boundaries the land is located. The conditions of sale will be in accordance with the authorities contained in Section 40-10-27 of the Act.

155. Sale of Land.

155.100. The Division may sell land acquired under R643-879 by public sale if:

155.110. Such land is suitable for industrial, commercial, residential, or recreational development;

155.120. Such development is consistent with local, state, or federal land use plans for the area in which the land is located; and

155.130. If it is found that retention by the state or disposal under other paragraphs of R643-879, is not in the

public interest.

155.200. Disposal procedures will be in accordance with Section 40-10-27 of the Act.

155.300. The Division may transfer title or administrative responsibility for land to cities, municipalities, or quasi-governmental bodies, provided that the Division provides for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

156. All moneys received from disposal of land under R643-879 will be deposited in the Abandoned Mine Reclamation Account in accordance with R643-872.

KEY: mines, mining law, reclamation, water policy
June 22, 1995 40-10-1 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-882. Reclamation on Private Land.
R643-882-100. Scope.

The rules under R643-882 authorize reclamation on private land and establish procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Division.

120. Appraisals.

121. A notarized appraisal of the fair market value of private land to be reclaimed which may be subject to a lien under R643-882-130 will be obtained from an independent appraiser.

122. A notarized appraisal of all land reclaimed which was appraised under R643-882-121 will also be obtained from an independent appraiser. The appraisal will state the market value of the land as reclaimed. Where reclamation will require more than six months to complete, the appraisal will not be started until actual completion of reclamation activities.

123. The landowner upon whose property a lien is filed is to be provided with a statement of the increase in market value, an itemized statement of reclamation expenses, and a notice that a lien is being or has been filed in accordance with R643-882-130.

130. Liens.

131. The Division has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value based on the appraisals obtained under R643-882-120; however,

131.100. A lien will not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to participate in or exercise control over the mining operation which necessitated the reclamation work.

131.200. The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the Division.

132. The lien may be waived by the Division if the reclamation work performed on private land primarily benefits health, safety, or environmental values of the greater community or area in which the land is located, or if the reclamation is necessitated by an unforeseen occurrence and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the occurrence.

133. If a lien is to be filed, the Division will, within six months after the completion of the reclamation work, file a statement in the office of the County Recorder in which the land is located. Such statement will consist of an account of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under R643-882-120. The amount reported to be the increase in value of the property will constitute the lien to be recorded and will have priority as a lien second only to the lien of real estate taxes imposed upon the land.

134. Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

140. Satisfaction of Liens.

141. A lien placed on private property will be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion will remain as a lien on the property.

142. The Division will maintain or renew the lien from time to time as may be required under state or local law.

143. Moneys derived from the satisfaction of liens established under R643-882 will be deposited in the Abandoned Mine Reclamation Account.

KEY: mines, reclamation
June 22, 1995 40-10-1 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-884. State Reclamation Plan.
R643-884-100. Scope.

The rules under R643-884 establish the procedures and requirements for the preparation, submission, and approval of the Reclamation Plan.

130. Content of Proposed State Reclamation Plan. The proposed Reclamation Plan will be submitted to the Director in writing and will include the following information:

131. A designation by the Governor for the Division to administer the Reclamation Program and to receive and administer grants under 30 CFR Part 886.

132. A legal opinion from the State Attorney General that the Division has the authority under state law to conduct the program.

133. A description of the policies and procedures to be followed by the Division in conducting the reclamation program, including:

133.100. The purposes of the Reclamation Program;

133.200. The specific criteria for ranking and identifying projects to be funded;

133.300. The coordination of reclamation work among the Abandoned Mine Reclamation Program and the Rural Land Reclamation Program administered by the Soil Conservation Service and OSM's reclamation programs; and

133.400. Policies and procedures regarding land acquisition, management, and disposal under R643-879;

133.500. Policies and procedures regarding reclamation on private land under R643-882;

133.600. Policies and procedures regarding rights of entry under R643-877; and

133.700. Public participation and involvement in the preparation of the Reclamation Plan and in the Reclamation Program.

134. A description of the administrative and management structure to be used in conducting the reclamation program, including:

134.100. The organization of the Division and its relationship to other state organizations or officials that will participate in or augment the Division's reclamation capacity;

134.200. The personnel staffing policies which will govern the assignment of personnel to the Reclamation Program;

134.300. The purchasing and procurement systems to be used by the Division. Such systems will meet the requirements of Office of Management and Budget Circular No. A-102, Attachment O;

134.400. The accounting system to be used by the Division, including specific procedures for the operation of the Abandoned Mine Reclamation Account.

135. A general description, derived from available data, of the reclamation activities to be conducted under the Reclamation Plan, including the known or suspected eligible lands and waters within the state which require reclamation, including:

135.100. A map showing the general location of known or suspected eligible lands and waters;

135.200. A description of the problems occurring on these lands and waters;

135.300. How the plan proposes to address each of the problems occurring on these lands and waters;

135.400. How the land to be reclaimed relates to existing and planned uses of lands in surrounding areas.

136. A general description, derived from available data, of the conditions prevailing in the different geographic areas of the state where reclamation is planned, including:

136.100. The economic base;

136.200. Significant esthetic, historic or cultural, and recreational values; and

136.300. Endangered and threatened plant, fish, and wildlife and their habitats.

150. State Reclamation Plan Amendment. The Division may, at any time, submit to the Director a proposed amendment or revision to its approved Reclamation Plan. If the amendment or revision changes the objectives, scope, or major policies followed by the Division in the conduct of its reclamation program, the Division will include a description of the extent of public involvement in the preparation of the amendment or revision.

170. Impact Assistance. The Reclamation Plan may provide for construction of specific public facilities in communities impacted by coal development. This form of assistance is available when the Governor has certified, and the Director has concurred that:

171. All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

172. The specific public facilities are required as a result of coal development; and

173. Impact funds which may be available under the Federal Mineral Leasing Act of 1920, as amended, or the act of October 20, 1978, Pub. L. 94-565 (9 Stat. 2662) are inadequate for such construction.

KEY: mines, reclamation
1987 40-10-1 et seq.
Notice of Continuation August 24, 2016

R643. Natural Resources; Oil, Gas and Mining; Abandoned Mine Reclamation.
R643-886. State Reclamation Grants.
R643-886-100. Scope.

The rules under R643-886 set forth procedures for grants to the Division for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved.

110. Eligibility for Grants. The Division is eligible for grants under R643-886 if it has a Reclamation Plan approved under 30 CFR Part 884.

120. Coverage and Amount of Grants.

121. The Division may use moneys granted under R643-886 to administer the approved Reclamation Program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover direct costs to the Division for services and materials obtained from other state agencies or local jurisdictions.

122. Grants will be approved for reclamation of eligible lands and water, construction of public facilities, program administration, the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes, and community impact assistance. To the extent technologically and economically feasible, public facilities that are planned, constructed, or modified in whole or in part with abandoned mine land grant funds should utilize fuel other than petroleum or natural gas.

123. Acquisition of land or interests in land and any mineral or water rights associated with the land will be approved for up to 90 percent of the costs.

R643-886-200. Administrative Procedures.

The Division will follow administrative procedures governing accounting, payment, property, and related requirements contained in Office of Management and Budget Circular No. A-102.

210. Allowable Costs.

211. Reclamation project costs which will be allowed include actual costs of construction, operation and maintenance, planning and engineering, inspection, other necessary administration costs and up to 90 percent of the costs of the acquisition of land.

212. Costs must conform with any limitation, conditions, or exclusions set forth in the grant agreement.

220. Financial Management.

221. The Division will account for grant funds in accordance with the requirement of Office of Management and Budget Circular No. A-102. The Division will use generally accepted accounting principles and practices consistently applied. Accounting for grant funds must be accurate and current.

222. The Division will adequately safeguard all accounts, funds, property, and other assets and will assure that they are used solely for authorized purposes.

223. The Division will provide a comparison of actual amounts spent with budgeted amounts for each grant.

224. When advances are made by a letter-of-credit method, the Division will make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

225. The Division will design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

230. Reports.

231. The Division will for each grant/cooperative agreement submit quarterly to the Office the following reports prepared according to Office of Management and Budget Circular No. A-102, Attachments H and I:

231.100. Financial Status Report, Form SF-269 for the agency's administrative grant/cooperative agreement and the Performance Report, Form OSM-51 covering the performance aspects of the grant/cooperative agreement.

231.200. Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271 and the Performance Report, Form OSM-51 for each activity or project including projects previously funded or completed during the quarter.

232. The Division will for each grant/cooperative agreement submit annually to the Office the following reports prepared according to Office of Management and Budget Circular No. A-102, Attachments H and I:

232.100. A final Financial Status Report, Form SF-269 for the agency's administrative grant/cooperative agreement and a final Performance Report, Form OSM-51 covering the performance aspects of the grant/cooperative agreement.

232.200. A cumulative fourth quarter Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271 and a cumulative annual Performance Report, Form OSM-51 which includes:

232.210. For each project or activity, a brief description and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed or being reclaimed and a summary of achieved or expected benefits.

232.220. For any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land.

232.230. For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

232.240. A Form OSM-76, "Abandoned Mine Land Problem Area Description," shall be submitted upon project completion to report the accomplishments achieved through the project.

240. Records.

241. The Division will maintain complete records in accordance with Office of Management and Budget Circular No. A-102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly:

241.100. The amount and disposition by the Division of all assistance received for the program.

241.200. The total direct and indirect costs of the program for which the grant was awarded.

242. Subgrantees and contractors, including contractors for professional services, will maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

KEY: mines, reclamation
June 22, 1995 40-10-1 et seq.
Notice of Continuation August 24, 2016

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 as 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 August 26, 2016

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-2. General Rules.
R649-2-1. Scope of Rules.

1. The following general rules adopted by the board pursuant to Chapter 6 of Title 40 shall apply to all lands in the state in order to conserve the natural resources of oil and gas in the state, to protect human health and the environment, to prevent waste, to protect the correlative rights of all owners and to realize the greatest ultimate recovery of oil and gas.

2. Special rules and orders have been and will be issued by the board when required and shall prevail as against the general rules and orders of the board if in conflict therewith.

3. Exceptions to the general rules may also be granted by the director or authorized agent for good cause shown and shall prevail as against the general rules.

4. No exceptions granted by the board, director, or authorized agent to the rules applicable to the Underground Injection Control Program will be effective without the consent of the federal Environmental Protection Agency.

R649-2-2. Application of Rules to Lands Owned or Controlled By the United States.

These general rules shall apply to all lands in the state including lands of the United States and lands subject to the jurisdiction of the United States to the extent lawfully subject to the state's power.

R649-2-3. Application of Rules to Unit Agreements.

1. The board may suspend the application of the general rules or orders or any part thereof, with regard to any unit agreement approved by a duly authorized officer of the appropriate federal agency, so long as the conservation of oil or gas and the prevention of waste is accomplished thereby.

2. Such suspension shall not relieve any operator from making such reports as are otherwise required by the general rules or orders, or as may reasonably be requested by the board or the division in order to keep the board and the division fully informed as to operations under such unit agreements.

R649-2-4. Designation of Agent or Operator.

1. A designation of agent or operator shall be submitted to the division prior to the commencement of operations.

2. A designation of agent or operator will, for purposes of the general rules and orders, be accepted as evidence of authority of agent to fulfill the obligations of the owner, to sign any required documents or reports on behalf of the owner, and to receive all authorized orders or notices given by the board or the division.

3. All changes of address and any termination of the designated agent's or operator's authority shall be promptly reported in writing to the division, and in the latter case a designation of a new agent or operator shall be promptly made.

R649-2-5. Right to Inspect.

1. The director or authorized agent shall have the right at all reasonable times to go upon and inspect any oil or gas properties and wells for the purpose of making any investigations or tests reasonably necessary to ensure compliance with the provisions of the statutes, the general rules and orders of the board or any special field rules and orders. The director or authorized agent shall report any observed violation to the board.

2. The documentation of off lease transportation of crude oil required by R649-2-6, Access to Records, shall be carried in the motor vehicle during transportation and shall be available for examination and inspection by the director or an authorized agent upon request.

R649-2-6. Access to Records.

1. Any person who produces, operates, sells, purchases, acquires, stores, transports, refines, or processes oil or gas or who injects fluids for cycling, pressure maintenance, secondary or enhanced recovery, or disposal of salt water or oil field waste within the state, shall make and keep appropriate books and records covering his operations in the state from which he shall be able to make and substantiate all reports required by the board or the division.

1.1. Such books and records, together with copies of all reports and notices submitted to the board or the division shall be kept on file and available for inspection by the director or an authorized agent at all reasonable times for a period of at least six years.

1.2. The director or the authorized agent shall also have access to all pertinent well records wherever located.

2. Each owner or operator shall permit the director or authorized agent at his sole risk and expense, in the absence of negligence on the part of the owner or operator, to come upon any lease, property or well operated or controlled by him; to inspect the records pertaining to and the manner of operation of such property or well; and to have access at all reasonable times to any and all records pertaining to such well. All information so obtained by the director or authorized agent shall be kept confidential and shall be reported only to the division or its authorized agent, unless the owner or operator gives written permission to the director to release such information.

3. All off lease transportation of oil by motor vehicle shall be accompanied by a run ticket or equivalent document. The documentation shall identify the name and address of the transporter, the name of the operator, the lease or facility from which the oil was taken, the date of removal, the API gravity of the oil, the calculated percentage of BS and W, the volume of oil or the opening and closing tank gauges or meter readings, and the destination of the oil.

R649-2-7. Naming of Oil and Gas Fields or Pools.

1. The division shall name oil and gas fields or pools within the state in cooperation with a Fields Names Advisory Committee and with due regard and consideration for any recommendation from the owners or operators of such fields or pools. The Field Names Advisory Committee shall be composed of a representative of the United States Bureau of Land Management and representatives of appropriate state agencies and the oil and gas industry.

R649-2-8. Measurement of Production.

1. The volume of oil production shall be computed in barrels of clean oil, on the basis of acceptable meter measurements, tank measurements, or with such greater accuracy as may be required by the division. Computations of the volume of oil production shall be subject to the following corrections:

1.1. The gross volume of oil shall be corrected to exclude the entire volume of impurities not constituting a natural component part of the oil.

1.2. The observed volume of oil after correction for impurities shall be further corrected to the standard volume at 60 degrees Fahrenheit, in accordance with Table 6A of the API/ASTM D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), or any revisions or supplements, or any alternative publication or tables approved by the division.

1.3. The observed gravity of oil shall be corrected to the standard API gravity at 60 degrees Fahrenheit in accordance with Table 5A of API/ASTM, D-1250, Chapter 11.1, Manual of Petroleum Measurement (1980), or any revisions or

supplements, or any alternative publication or tables approved by the division.

2. All gas shall be measured by an orifice type meter unless otherwise authorized by the division.

2.1. In computing the volumes of all gas produced, sold, or injected, the standard pressure base shall be 14.73 pounds per square inch absolute (psia), and the standard temperature base shall be 60 degrees Fahrenheit.

2.2. All measurements of gas shall be adjusted by computation to these standards, regardless of the pressure and temperature at which the gas was actually measured, unless otherwise authorized by the division.

R649-2-9. Refusal to Agree.

1. An owner shall be deemed to have refused to agree to bear his proportionate share of the costs of the drilling and operation of a well under Section 40-6-6.5 if:

1.1. The operator of the proposed well has, in good faith, attempted to reach agreement with such owner for the leasing of the owner's mineral interest or for that owner's voluntary participation in the drilling of the well.

1.2. The owner and the operator have been unable to agree upon terms for the leasing of the owner's interest or for the owner's participation in the drilling of the well.

2. If the operator of the proposed well shall fail to attempt, in good faith, to reach agreement with the owner for the leasing of that owner's mineral interest or for voluntary participation by that owner in the well prior to the filing of a Request for Agency Action for involuntary pooling of interests in the drilling unit under Section 40-6-6.5 then, upon written request and after notice and hearing, the hearing on the Request for Agency Action for involuntary pooling may, at the discretion of the board or its designated hearing examiner, be delayed for a period not to exceed 30 days, to allow for negotiations between the operator and the owner.

R649-2-10. Notification of Lease Sale or Transfer.

The owner of a lease shall provide notification to any person with an interest in such lease, when all or part of that interest in the lease is sold or transferred.

R649-2-11. Confidentiality of Well Log Information.

1. Well logs marked confidential shall be kept confidential for one year after the date on which the log is required to be filed with the division, unless the operator gives written permission to release the log at an earlier date.

2. Information on a newly permitted well will be held confidential only upon receipt by the division of a written request from the owner or operator.

3. The period of confidentiality may begin at the time the APD is submitted for approval if a request for confidentiality is received at that time. The information on the application itself will not be considered confidential.

4. Information that shall be held confidential includes well logs, electrical or radioactivity logs, electromagnetic, electrical, or magnetic surveys, core descriptions and analysis, maps, other geological, geophysical, and engineering information, and well completion reports that contain such information.

5. The owner or operator shall clearly mark documents as confidential. Such marking shall be in red and be clearly visible.

6. Confidential wells or information shall be reported separately from wells or information that is not in confidential status.

R649-2-12. Tests and Surveys.

1. When deemed necessary or advisable the Director or authorized agent can require that tests or surveys be made to determine the presence of waste of oil, gas, water, or reservoir energy; the quantity of oil, gas or water; the amount and direction of deviation of any well from the vertical; formation, casing, tubing, or other pressures; or any other test or survey deemed necessary to carry out the purposes of the Oil and Gas Conservation Act.

2. Directional, deviation, and/or measurements-while-drilling (MWD) surveys must be run on horizontal wells and submitted in accordance with R649-3-21, Well Completion and Filing of Well Logs, as amended for horizontal wells.

KEY: oil and gas law
June 2, 1998 **40-6-1 et seq.**
Notice of Continuation August 26, 2016

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-3. Drilling and Operating Practices.
R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or Indian lease requirements and approved by the appropriate agency for all wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

3.1. The bond for drilling or operating wells shall remain in full force and effect until liability thereunder is released by the division.

3.2. Release of liability shall be conditioned upon compliance with the rules and orders of the Board.

4. For all drilling or operating wells, the bond amounts for individual wells and blanket bonds required in subsections 5. and 6. represent base amounts adjusted to year 2002 average costs for well plugging and site restoration. The base amounts are effective immediately upon adoption of this bonding rule, subject to division notification as described in subsection 4.1.

4.1. The division shall provide written notification to each operator of the need to revise or establish bonds in amounts required by this bonding rule.

4.2. Within 120 days of such notification by the division, the operator shall post a bond with the division in compliance with this bonding rule.

4.3. If the division finds that a well subject to this bonding rule is in violation of Rule R649-3-36., Shut-in and Temporarily Abandoned Wells, the division shall require a bond amount for the applicable well in the amount of actual plugging and site restoration costs.

4.4. The division shall provide written notification to an operator found in violation of Rule R649-3-36., and identify the need to establish increased bonding for shut-in wells.

4.4.1. Within 30 days of notification by the division, the operator shall submit to the division an estimate of plugging and site restoration costs for division review and approval.

4.4.2. Upon review and approval of the cost estimate, the division will provide a notice of approval back to the operator specifying the approved bond amount for shut-in wells.

4.4.3. Within 120 days of receiving such notice of approval, the operator shall post a bond with the division in compliance with this bonding rule.

5. The bond amount for drilling or operating wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of at least $1,500, for each such well.

5.2. For wells of more than 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of at least $15,000 for each such well.

5.3. For wells of more than 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of at least $30,000 for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of at least $60,000 for each such well.

6. If, prior to the July 1, 2003 revision of this bonding rule, an operator is drilling or operating more than one well on lands with fee or privately owned minerals, and a blanket bond was furnished and accepted by the division in lieu of individual well bonds, that operator shall remain qualified for a blanket bond with the division subject to the amounts described by this bonding rule.

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover all wells that the operator may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of at least $15,000 shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of at least $120,000 shall be required.

6.4. Subsequent to the July 1, 2003 revision of this rule, operators who desire to establish a new blanket bond that consists either fully or partially of a collateral bond as described in subsection 10.2. shall be qualified by the division for such blanket bond.

6.4.1. Operators who elect to establish a surety bond as a blanket bond shall not require qualification by the division.

6.4.2. In those cases where operator qualification for blanket bond is required, the division will review the following criteria and make a written finding of the operator's adequacy to meet the criteria before accepting a new blanket bond:

6.4.3. The ratio of current assets to current liabilities shall be 1.20 or greater, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

6.4.4. The ratio of total liabilities to stockholder's equity shall be 2.50 or less, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the Board for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the Board may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well or when reviewing a change of operator for a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may require a change in the form or the amount of bond coverage. In such cases, the division will support its case for a change of bond coverage in the form of written findings to the operator of record of the well and provide a schedule for completion of the requisite changes.

8.1 Appeals of mandated bond amount changes will follow procedures established by Rule R649-10., Administrative Procedures.

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations that would result in suspension or revocation of the suretys or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 10.1.1. will have 120 days from the date of division notification after enactment of the changes to subsection 10.1.1., or face enforcement action. When the division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 10.1.1., the operator has 120 days after notice from the division by mail to correct the deficiency, or face enforcement action.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator that is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the division has approved the payment of interest to the operator.

10.2.1.4. The division shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.

10.2.3.5. The division shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in subsections 5. and 6. of all collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations that might affect the net cash available to the division to complete plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in subsections 5. and 6.

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide sufficient coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under subsection15.

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

14.3. When the operator of wells covered by a blanket bond changes, the division will review the financial eligibility of a new operator for blanket bonding as described in subsection 6.4., and the division will make a written finding concerning the applicability of blanket bonding to the prospective new operator.

14.4. Transfer of the ownership of property does not cancel liability under an existing bond until the division reviews and approves a change of operator for any wells

affected by the transfer of ownership.

14.5. If a transfer of the ownership of property is made and an operator wishes to request a change to a new operator of record for the affected wells, then the following requirements shall be met:

14.5.1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee, and the operator shall request a change of operator for the affected wells.

14.5.2. The request shall describe each well by reference to its well name and number, API number, and its location, as described by the section, township, range, and county, and shall also include a proposed effective date for the operator change.

14.5.3. The request shall contain the endorsement of the new operator accepting such change of operator.

14.5.4. The request shall contain evidence of the new operator's bond coverage.

14.5.5. The request may include a request to cancel liability for the well(s) included in the operator change that are listed under the existing operator's bond upon approval by the division of an adequate replacement bond in the name of the new operator.

14.6. Upon receipt of a request for change of operator, the division will review the proposed new operator's bond coverage, and if bond coverage is acceptable, the division will issue a notice of approval of the change of operator.

14.6.1. If the division determines that the new operator's bond coverage will be insufficient to cover the costs of plugging and site restoration for the applicable well(s), the division may deny the change of operator, or the division may require a change in the form and amount of the new operator's bond coverage in order to approve the change of operator. In such cases, the division will support its case for a change of the new operator's bond coverage in the form of written findings, and the division will provide a schedule for completion of the requisite changes in order to approve the operator change. The written findings and schedule for changes in bond coverage will be sent to both the operator of record of the applicable well(s) and the proposed new operator.

14.7. If the request for operator change included a request to cancel liability under the existing operator's bond in accordance with subsection 14.5.5., and the division approves the operator change, then the division will issue a notice of approval of termination of liability under the existing bond for the wells included in the operator change. When the division has approved the termination of liability under a bond, the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the operator change.

14.8. If all of the wells covered by a bond are affected by an operator change, the bond may be released by the division in accordance with subsection 15.

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division or the division has issued a notice of approval of termination of liability for all wells covered by an existing bond.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of any previously plugged well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in subsection 15.2.

15.1.3. Within 30 days after a request for bond release has been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the Board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with subsection 15.1.1., the division shall within 30 days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to subsection 15.1.5., or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in subsection 15.3. shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in subsection 15.3. shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which

the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the Forfeiture of Bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the Board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in subsection 15.3., in addition to the notice requirements of the Board procedural rules.

16.4. After proper notice and hearing, the Board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the Board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator all costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of subsection 16.7., then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

R649-3-2. Location And Siting of Vertical Wells and Statewide Spacing for Horizontal Wells.

1. In the absence of special orders of the board establishing drilling units or authorizing different well density or location patterns for particular pools or parts thereof, each oil and gas well shall be located in the center of a 40 acre quarter-quarter section, or a substantially equivalent lot or tract or combination of lots or tracts as shown by the most recent governmental survey, with a tolerance of 200 feet in any direction from the center location, a "window" 400 feet square.

1.1.No oil or gas well shall be drilled less than 920 feet from any other well drilling to or capable of producing oil or gas from the same pool.

1.2. No oil or gas well shall be completed in a known pool unless it is located more than 920 feet from any other well completed in and capable of producing oil or gas from the same pool.

2. The division shall have the administrative authority to determine the pattern location and siting of wells adjacent to an area for which drilling units have been established or for which a request for agency action to establish drilling units has been filed with the board and adjacent to a unitized area, where there is sufficient evidence to indicate that the particular pool underlying the drilling unit or unitized area may extend beyond the boundary of the drilling unit or unitized area and the uniformity of location patterns is necessary to ensure orderly development of the pool.

3. In the absence of special orders of the Board, no portion of the horizontal interval within the potentially productive formation shall be closer than six hundred-sixty (660) feet to a drilling or spacing unit boundary, federally unitized area boundary, uncommitted tract within a unit, or boundary line of a lease not committed to the drilling of such horizontal well.

4. The surface location for a horizontal well may be anywhere on the lease.

5. Any horizontal interval shall not be closer than one thousand three hundred and twenty (1,320) feet to any vertical well completed in and producing from the same formation. Vertical wells drilled to and completed in the same formation as in a horizontal well are subject to applicable drilling unit orders of the board or the other conditions of this rule that do not specifically pertain to horizontal wells and may be drilled and produced as provided therein.

6. A temporary six hundred and forty (640) acre spacing unit, consisting of the governmental section in which the horizontal well is located, is established for the orderly development of the anticipated pool.

7. In addition to any other notice required by the statute or these rules, notice of the Application for Permit to Drill for a horizontal well shall be given by certified mail to all owners within the boundaries of the designated temporary spacing unit.

8. Horizontal wells to be located within federally supervised units are exempt from the above referenced conditions of 5, 6 and 7.

9. Exceptions to any of the above referenced conditions of 3 through 7 may be approved upon proper application pursuant to R649-3-3, Exception to Location and Siting of Wells, or R649-10, Administrative Procedures.

10. Additional horizontal wells may be approved by order of the Board after hearing brought upon by a Request for Agency Action (Petition) filed in accordance with the Board's Procedural Rules.

R649-3-3. Exception to Location and Siting of Wells.

1. Subject to the provisions of R649-3-11.1.2, the division shall have the administrative authority to grant an exception to the locating and siting requirements of R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from all owners within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or;

1.3. Written consent from all owners of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and

hearing, grant an exception.

3. The application for an exception to R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with R649-3-2 or Board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of all lands within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or

3.5. The names of owners of all directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

R649-3-4. Permitting of Wells to be Drilled, Deepened or Plugged-Back.

1. Prior to the commencement of drilling, deepening or plugging back of any well, exploratory drilling such as core holes and stratigraphic test holes, or any surface disturbance associated with such activity, the operator shall submit Form 3, Application for Permit to Drill, Deepen, or Plug Back and obtain approval. Approval shall be given by the division if it appears that the contemplated location and operations are not in violation of any rule or order of the board for drilling a well.

2. The following information shall be included as part of the complete Application for Permit to Drill, Deepen, or Plug Back.

2.1. The telephone number of the person to contact if additional information is needed.

2.2. Proper identification of the lease as state, federal, Indian, or fee.

2.3. Proper identification of the unit, if the well is located within a unit.

2.4. A plat or map, preferably on a scale of one inch equals 1,000 feet, prepared by a licensed surveyor or engineer, that shows the proposed well location. For directional wells, both surface and bottomhole locations should be marked.

2.5. A copy of the Division of Water Rights approval or the identifying number of the approval for use of water at the drilling site.

2.6. A drilling program containing the following information shall also be submitted as part of a complete APD.

2.6.1. The estimated tops of important geologic markers.

2.6.2. The estimated depths at which the top and the bottom of anticipated water, oil, gas, or other mineral-bearing formations are expected to be encountered, and the owner's or operator's plans for protecting such resources.

2.6.3. The owner's or operator's minimum specifications for pressure control equipment to be used and a schematic diagram thereof showing sizes, pressure ratings or API series, proposed testing procedures and testing frequency.

2.6.4. Any supplementary information more completely describing the drilling equipment and casing program as required by Form 3, Application for Permit to Drill, Deepen, or Plug Back.

2.6.5. The type and characteristics of the proposed circulating medium or mediums to be employed in drilling, the quantities and types of mud and weighting material to be maintained, and the monitoring equipment to be used on the mud system.

2.6.6. The anticipated type and amount of testing, logging, and coring.

2.6.7. The expected bottomhole pressure and any anticipated abnormal pressures or temperatures or potential hazards, such as hydrogen sulfide, H_2S rules are found in R649-3-12 expected to be encountered, along with contingency plans for mitigating such identified hazards.

2.6.8. Any other facets of the proposed operation that the lessee or operator desires to point out for the division's consideration of the application.

2.6.9. If an Application for Permit to Drill, Deepen, or Plug Back is for a proposed horizontal well, a horizontal well diagram clearly showing the well bore path from the surface through the terminus of the lateral shall be submitted.

2.7. Form 5, Designation of Agent or Operator shall be filed when the operator is a person other than the owner.

2.8. If located on State or Fee surface, an APD will not be approved until an Onsite Predrill Evaluation is performed as outlined in R649-3-18.

3. Two legible copies, carbon or otherwise, of the APD filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

4. Approval of the APD shall be valid for a period of 12 months from the date of such approval. Upon approval of an APD, a well will be assigned an API number by the division. The API number should be used to identify the permitted well in all future correspondence with the division.

5. If a change of location or drilling program is desired, an amended APD shall be filed with the division and its approval obtained. If the new location is at an authorized location in the approved drilling unit, or the change in drilling program complies with the rules for that area, the change may be approved verbally or by telegraph. Within five days after obtaining verbal or telegraphic authorization, the operator shall file a written change application with the division.

6. After a well has been completed or plugged and abandoned, it shall not be reentered without the operator first submitting a new APD and obtaining the division's approval. Approval shall be given if it appears that a bond has been furnished or waived, as required by R649-3-1, Bonding, and the contemplated work is not in violation of any rule or order of the board.

7. An operator or owner who applies for an APD in an area not subject to a special order of the board establishing drilling units, may contemporaneously or subsequently file a Request for Agency Action to establish drilling units for an area not to exceed the area reasonably projected by the operator or owner to be underlaid by the targeted reservoir.

8. An APD for a well within the area covered by a proper Request for Agency Action that has been filed by an interested person, or the division or the board on its own motion, for the establishment of drilling units or the revision of existing drilling units for the spacing of wells shall be held in abeyance by the division until such time as the matter has been noticed, fully heard and determined.

9. An exception to R649-3-4-8 shall be made and a permit shall be issued by the division if an owner or operator files a sworn statement demonstrating to the division's satisfaction that on and after the date the Request for Agency

Action requesting the establishment of drilling units was filed, or the action of the division or board was taken; and

9.1. The owner or operator has the right or obligation under the terms of an existing contract to drill the requested well; or

9.2. The owner or operator has a leasehold estate or right to acquire a leasehold estate under a contract that will be terminated unless he is permitted to commence the drilling of the required well before the matter can be fully heard and determined by the board.

R649-3-5. Identification.

1. Every drilling and producible well shall be identified by a sign posted on the derrick or in a conspicuous place near the well.

2. The sign shall be of durable construction. The lettering on the sign shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of 25 feet.

3. The wells on each lease or property shall be numbered in nonrepetitive, logical, and distinctive sequence. Each sign shall show the number or name of the well, the name of the owner or operator, the lease name, and the location of the well by quarter section, township, and range.

R649-3-6. Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventer equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

R649-3-7. Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

R649-3-8. Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

R649-3-9. Protection of Upper Productive Strata.

1. No well shall be deepened for the purpose of

producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

R649-3-10. Tolerances for Vertical Drilling.

1. Deviation from the vertical for short distances is permitted in the drilling of a well without special approval to straighten the hole, sidetrack junk, or correct other mechanical difficulties.

2. All wells shall be drilled such that the surface location of the well and all points along the intended well bore shall be within the tolerances allowed by R649-3-2, Location and Siting of Vertical Wells and Statewide Spacing for Horizontal Wells, or the appropriate board order.

R649-3-11. Directional Drilling.

1. Except for the tolerances allowed under R649-3-10, no well may be intentionally deviated unless the operator shall first file application and obtain approval from the division.

1.1. An application for directional drilling may be approved by the division without notice and hearing when the applicant is the owner of all the oil and gas within a radius of 460 feet from all points along the intended well bore, or the applicant has obtained the written consent of the owner to the proposed directional drilling program.

1.2. An application pertaining to a well with a surface location outside the tolerances allowed by R649-3-2 or the appropriate board order, but with the point of penetration of the targeted productive zone(s) and bottom hole location within said tolerances, may be approved by the division without notice and hearing conditioned upon the operator filing a certification included with the application that it will not perforate and complete the well in any other zone(s) outside of said tolerances without complying with the requirements of R649-3-11.1.1. Under these circumstances, no additional exception location approval under R649-3-3 is required.

1.3. An application for directional drilling may be included as part of the initial APD for a proposed well.

2. An application for directional drilling shall include the following information:

2.1. The name and address of the operator.

2.2. The lease name, well number, field name, reservoir name, and county where the proposed well is located.

2.3. A plat or sketch showing the distance from the surface location to section and lease lines, the target location within the intended producing interval, and any point along the intended well bore outside the 460 foot radius for which the consent of the owner has been obtained.

2.4. The reason for the intentional deviation.

2.5. The signature of designated agent or representative of operator.

3. Within 30 days following completion of a directionally drilled well, a complete angular deviation and directional survey of the well obtained by an approved well survey company shall be filed with the division, together with other regularly required reports.

R649-3-12. Drilling Practices for Hydrogen Sulfide H_2S Areas and Formations.

1. This rule shall apply to drilling, redrilling, deepening, or plugging back operations in areas where the formations to be penetrated are known to contain or are expected to contain H_2S in excess of 20 ppm and to areas where the presence or absence thereof is unknown.

2. A written contingency plan, providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of an accidental release of H_2S gas shall be submitted to the division as part of the initial APD for a well or as a sundry notice.

3. All proposed drill site locations shall be planned to obtain the maximum safety benefits consistent with the rig configuration, terrain, prevailing winds, etc.

3.1. The drilling rig shall, where possible, be situated so that prevailing winds blow across the rig in a direction toward the reserve pit and away from escape routes.

3.2. On-site trailers shall be located to allow reasonably safe distances from both the well and the outlet of the flare line.

4. At least two cleared areas shall be designated as crew briefing or safety areas.

4.1. Both areas shall be located at least 200 feet from the well, with at least one area located generally upwind from the well.

5. Protective equipment shall be provided by the operator or its drilling contractor for operating personnel and shall include the following:

5.1. An adequate number of positive pressure type self-contained breathing apparatus to allow all personnel normally involved on a drilling location immediate access to such equipment, with a minimum of one working apparatus available for the immediate use of each rig hand in emergencies.

5.2. Chalk boards or note pads to be used for communication when wearing protective breathing apparatus.

5.3. First aid supplies.

5.4. One resuscitator complete with medical oxygen.

5.5. A litter or stretcher.

5.6. Harnesses and lifelines.

5.7. A telephone, radio, mobile phone, or other communication device that provides emergency two-way communication from a safe area near the well location.

6. Each drill site shall have an H_2S detection and monitoring system that activates audible and visible alarms when the concentration of H_2S reaches the threshold limit of 20 ppm in air. This equipment shall have a rapid response time and be capable of sensing a minimum of ten ppm H_2S in air, with at least three sensing points, located at the shale shaker, on the derrick floor, and in the cellar. Other sensing points shall be located at other critical areas where H_2S might accumulate. Portable H_2S detection equipment capable of sensing an H_2S concentration of 20 ppm shall be available for all working personnel and shall be equipped with an audible warning signal.

7. Equipment to indicate wind direction at all times shall be installed at prominent locations. At least two wind socks or streamers shall be located at separate elevations at the well location and shall be easily visible from all areas of the location. Windsocks or streamers shall be located in illuminated areas for night operations.

8. When H_2S is encountered during drilling, well marked, highly visible warning signs shall be displayed at the

rig and along all access routes to the well location.

8.1. The signs shall warn of the presence of H_2S and shall prohibit approach to the well location when red flags are displayed.

8.2. Red flags shall be displayed when H_2S is present in concentrations greater than 20 ppm in air as measured on the equipment required under R649-3-12-6.

9. Unless adequate natural ventilation is present, portable fans or ventilation equipment shall be located in work areas to disperse H_2S when it is encountered.

10. A flare system shall be utilized to safely gather and burn H_2S bearing gas.

10.1. Flare lines shall be located as far from the operating site as feasible and shall be located in a manner to compensate for wind changes.

10.2. The outlets of all flare lines shall be located at least 150 feet from the well head unless otherwise approved by the division.

11. Sufficient quantities of additives shall be maintained on location to add to the mud system to scavenge or neutralize H_2S.

R649-3-13. Casing Tests.

1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3-7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

R649-3-14. Fire Hazards on the Surface.

1. All rubbish or debris that might constitute a fire hazard shall be removed to a distance of a least 100 feet from the well location, tanks, separator, or any structure. All waste oil or gas shall be burned or disposed of in a manner to avert creation of a fire hazard.

2. Any gas other than poisonous gas escaping from the well during drilling operations shall be, so far as practicable, conducted to a safe distance from the well site and burned in a suitable flare.

R649-3-15. Pollution and Surface Damage Control.

1. The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

1.1. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

1.2. At a minimum, the owner or operator shall:

1.2.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.2.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.2.4. Maintain tanks in a workmanlike manner that will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

1.2.4.1. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.2.5. Catch leaks and drips, contain spills, and cleanup promptly.

1.2.6. Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

1.2.7. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

1.2.8. In general, good housekeeping practices should be used.

R649-3-16. Reserve Pits and Other On-site Pits.

1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period.

4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

5. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels.

6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

R649-3-17. Inspection.

1. Inspection of wells shall be performed by the division to determine operator compliance with the rules and orders of the board.

2. The inspection shall not interfere with the mechanical operation of facilities or equipment used in drilling and production operations.

3. Inspections of operations involving a safety hazard shall not be conducted, nor shall an inspection be conducted that may cause a safety hazard.

R649-3-18. On-site Predrill Evaluation.

1. An on-site predrill evaluation of drilling operations located on state or private land shall be scheduled and conducted by the division prior to approval of an APD and no later than 30 days after receipt by the division of a complete APD.

1.1. An on-site predrill evaluation may be performed by the division prior to submittal of a complete APD at the written request of the operator.

1.2. The division, the operator, and other persons associated with the surface management or construction of the well site shall attend the predrill evaluation.

1.3. When appropriate, the operator's surveyor and archaeologist may also participate in the predrill evaluation.

1.4. When the surface of the land involved is privately owned, the operator shall include in the APD the name, address, and telephone number of the private surface owner as shown on the real property records of the county where the well is located.

1.5. The surface owner shall be invited by the division to attend the predrill evaluation.

1.6. The surface owner's inability to attend the predrill

evaluation shall not delay the scheduled evaluation.

2. Special stipulations concerning surface use or justifications for well spacing exceptions may be addressed and developed at the predrill evaluations.

2.1. Special stipulations shall be incorporated as conditions of the approved APD, together with any additional conditions determined by the division to be necessary following a review of the complete application.

R649-3-19. Well Testing.

1. Each operator shall conduct a stabilized production test of at least 24 hours duration not later than 15 days following the completion or recompletion of any well for the production of oil or gas.

1.1. The results of the test shall be reported in writing to the division within 15 days after completion of the test.

1.2. Additional tests shall be made as requested by the division.

2. The division may request subsurface pressure measurements on a sufficient number of wells in any pool to provide adequate data to determine reservoir characteristics.

3. Upon written request, the division may waive or extend the time for conducting any test.

4. A gas-oil ratio "GOR" test shall be conducted not later than 15 days following the completion or recompletion of each well in a pool that contains both oil and gas.

4.1. The average daily oil production, the average daily gas production and the average GOR shall be recorded.

4.2. The results of the GOR test shall be reported in writing to the division within 15 days after completion of the test.

4.3. A GOR test of at least 24 hours duration shall satisfy the requirements of R649-3-19-1.

5. When the results of a multipoint test or other approved test for the determination of gas well potential have not been submitted to the division within 30 days after completion or recompletion of any producible gas well, the division may order this test to be made.

5.1. All data pertinent to the test shall be submitted to the division in legible, written form within 15 days after completion of the test.

5.2. The performance of a multipoint or other approved test shall satisfy the requirements of R649-3-19-1.

6. All tests of any producible gas well will be taken in accordance with the Manual of Back-Pressure Testing of Gas Wells published by the Interstate Oil and Gas Compact Commission, with necessary modifications as approved by the division.

R649-3-20. Gas Flaring or Venting.

1. Produced gas from an oil well, also known as associated gas or casinghead gas, may be flared or vented only in the following amounts:

1.1. Up to 1,800 MCF of oil well gas may be vented or flared from an individual well on a monthly basis at any time without approval.

1.2. During the period of time allowed for conducting the stabilized production test or other approved test as required by R649-3-19, the operator may vent or flare all produced oil well gas as needed for conducting the test.

1.2.1. The operator shall not vent or flare gas that is not necessary for conducting the test or beyond the time allowed for conducting the test.

1.3. During the first calendar month immediately following the time allowed for conducting the initial stabilized production test as required by R649-3-19.1, the operator may vent or flare up to 3,000 MCF of oil well gas without approval.

1.4. Unavoidable or short-term oil well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

2. Produced gas from a gas well may be vented or flared only in the following amounts:

2.1. During the period of time allowed for conducting the stabilized production test, the multipoint test, or other approved test as required by R649-3-19, the operator may vent or flare all produced gas well gas as needed for conducting the test.

2.2. The operator shall not vent or flare gas which is not necessary for conducting the tests or beyond the time allowed for conducting the tests.

2.3. Unavoidable or short-term gas well gas venting or flaring may occur without approval in accordance with R649-3-20.4, 4.1, 4.2, and 4.3.

3. If an operator desires to produce a well for the purpose of testing and evaluation beyond the time allowed by R649-3-19 and vent or flare gas in excess of the aforementioned limits of gas venting or flaring, the operator shall make written request for administrative action by the division to allow gas venting or flaring during such testing and evaluation.

3.1. The operator shall provide any information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

3.2. Upon such request and based on the justification information presented, the division may authorize gas venting or flaring at unrestricted rates for up to 30 days of testing or no more than 50 MMCF of gas vented or flared, whichever is less.

4. Once a well is completed for production and gas is being transported or marketed, the operator is allowed unavoidable or short-term gas venting or flaring without approval only in the following cases:

4.1. Gas may be vented or released from oil storage tanks or other low pressure oil production vessels unless the division determines that the recovery of such vapors is warranted.

4.2. Gas may be vented or flared from a well during periods of line failures, equipment malfunctions, blowouts, fires, or other emergencies if shutting in or restricting production from the well would cause waste or create adverse impact on the well or producing reservoir.

4.3. The operator shall provide immediate notification to the division in all such cases in accordance with R649-3-32, Reporting of Undesirable Events.

4.4. Upon notification, the division shall determine if gas venting or flaring is justified and specify conditions of approval if necessary.

4.5. Gas may be vented or flared from a well during periods of well purging or evaluation tests not exceeding a period of 24 hours or a maximum of 144 hours per month.

4.6. The operator shall provide subsequent written notification to the division in all such cases.

5. If an operator wishes to flare or vent a greater amount of produced gas than allowed by this rule, the operator must submit a Request for Agency Action to the board to be considered as a formal board docket item. The request should include the following items:

5.1. A statement justifying the need to vent or flare more than the allowable amount.

5.2. A description of production test results.

5.3. A chemical analysis of the produced gas.

5.4. The estimated oil and gas reserves.

5.5. A description of the reinjection potential or other conservation oriented alternative for disposition of the produced gas.

5.6. A description of the amount of gas used in lease

operations.

5.7. An economic evaluation supporting the operator's determination that conservation of the gas is not economically viable. The evaluation should utilize any engineering or geologic data available and should consider total well production, not just gas production, in presenting the profitability and costs for beneficial use of the gas.

5.8. Any other information pertinent to a determination of whether marketing or otherwise conserving the produced gas is economically feasible.

6. Upon review of the request for approval to vent or flare gas from a well, the board may elect to:

6.1. Allow the requested venting or flaring of gas.

6.2. Restrict production until the gas is marketed or otherwise beneficially utilized.

6.3. Take any other action the board deems appropriate in the circumstances.

7. When gas venting or flaring from a well has not been approved by the division or the magnitude and duration of venting or flaring exceeds the amounts specified in these rules or any division or board approval, then the board may issue a formal order to alleviate the noncompliance and/or require the operator to appear before the board to provide justification of such venting or flaring. The division shall notify the appropriate governmental taxing and royalty agencies of any unapproved venting or flaring and of any subsequent board action.

8. No extraction plant processing gas in Utah shall flare or vent such gas unless such venting or flaring is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas vented or flared is of no commercial value.

9. In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or nonscheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process, and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of such shut-down or curtailment, following which the division shall take such action as is necessary.

R649-3-21. Well Completion and Filing of Well Logs.

1. For the purposes of this rule only, a well shall be determined to be completed when the well has been adequately worked to be capable of producing oil or gas or when well testing as required by the division is concluded.

2. Within 30 days after the completion of any well drilled or redrilled for the production of oil or gas, Form 8, Well Completion or Recompletion Report and Log, shall be filed with the division, together with a copy of the electric and radioactivity logs, if run.

3. In addition, one copy of all drillstem test reports, formation water analyses, porosity, permeability or fluid saturation determinations, core analyses and lithologic logs or sample descriptions if compiled, shall be filed with the division.

4. As prescribed under R649-2-12, Test and Surveys, the directional, deviation and/or measurement-while-drilling (MWD) survey for a horizontal well shall be filed within 30 days of being run. Such directional, deviation and/or MWD survey specifically related to well location or well bore path shall not be held confidential. Other MWD survey data that presents well log, or other geological, geophysical, or engineering information may be held confidential as provided in R649-2-11, Confidentiality of Well Log Information.

R649-3-22. Completion Into Two or More Pools.

1. The completion of a single well into more than one pool may be permitted by submitting an application to the division and securing its approval.

1.1. The application shall be submitted on Form 9, Sundry Notice and Report and shall be accompanied by an exhibit showing the location of all wells on contiguous oil and gas leases or drilling units overlying the pool.

1.2. The application shall set forth all material facts involved and the manner and method of completion proposed.

2. If oil or gas is to be produced from two or more pools open to each other through the same string of casing so that commingling will take place, the application must also be accompanied by a description of the method used to account for and to allocate production from each pool so commingled.

3. The application shall include an affidavit showing that the operator has provided a copy of the application to the owners of all contiguous oil and gas leases or drilling units overlying the pool.

3.1. If none of these owners file a written objection to the application within 15 days after the date the application is filed with the division, the application may be considered and approved by the division without a hearing.

3.2. If a written objection is filed that cannot be resolved administratively, the application may be approved only after notice and hearing by the board.

R649-3-23. Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

6. For the purpose of qualifying for a tax credit under Utah Code Ann. Section 59-5-102(7), the operator on his behalf and on behalf of each working interest owner must file a request with the division on Form 15, Designation of Workover or Recompletion. The request must be filed within 90 days after completing the workover or recompletion operations.

7. A workover which may qualify under Utah Code Ann. Section 59-5-102(7) shall be downhole operations conducted to maintain, restore or increase the producibility or serviceability of a well in the geologic interval(s) that the well is currently completed in, but shall not include:

7.1. Routine maintenance operations such as pump changes, artificial lift equipment or tubing repair, or other operations that do not involve changes to the wellbore configuration or the geologic interval(s) that it penetrates and that do not stimulate production beyond that which would be anticipated as the result of routine maintenance.

7.2. Operations to convert any well for use as a disposal well or other use not associated with enhancing the recovery of hydrocarbons.

7.3. Operations to convert a well to a Class II injection well for enhanced recovery purposes may qualify if the secondary or enhanced recovery project has received the necessary board approval.

8. A recompletion that may qualify under Utah Code Ann. Section 59-5-102(7) shall be downhole operations conducted to reestablish producibility or serviceability of a well in any geologic interval(s).

9. The division shall review the request for designation of a workover or recompletion and advise the operator and the State Tax Commission of its decision to approve or deny the operations for the purposes of Utah Code Ann. Section 59-5-102(7).

10. The division is responsible for approval of workover and recompletion operations that qualify for the tax credit.

10.1. If the operator disagrees with the decision of the division, the decision may be appealed to the board.

10.2. Appeals of all other workover and recompletion tax credit decisions should be made to the State Tax Commission.

R649-3-24. Plugging and Abandonment of Wells.

1. Before operations are commenced to plug and abandon any well the owner or operator shall submit a notice of intent to plug and abandon to the division for its approval.

1.1. The notice shall be submitted on Form DOGM-9, Sundry Notice and Report on Wells.

1.2. A legible copy of a similar report and form filed with the appropriate federal agency may be used in lieu of the forms prescribed by the board.

1.3. In cases of emergency the operator may obtain verbal or telegraphic approval to plug and abandon.

1.4. Within five days after receiving verbal or telegraphic approval, the operator shall submit a written notice of intent to plug and abandon on Form 9.

2. Both verbal and written notice of intent to plug and abandon a well shall contain the following information:

2.1. The location of the well described by section, township, range, and county.

2.2. The status of the well, whether drilling, producing, injecting or inactive.

2.3. A description of the well bore configuration indicating depth, casing strings, cement tops if known, and hole size.

2.4. The tops of known geologic markers or formations.

2.5. The plugging program approved by the appropriate federal agency if the well is located on federal or Indian land.

2.6. An indication of when plugging operations will commence.

3. A dry or abandoned well must be plugged so that oil, gas, water, or other substance will not migrate through the well bore from one formation to another.

3.1. Unless a different method and procedure is approved by the division, the method and procedure for plugging the well shall be as follows:

3.2. The bottom of the hole shall be filled to, or a bridge shall be placed at, the top of each producing formation open to the well bore, and a cement plug not less than 100 feet in length shall be placed immediately above each producing formation open to the well bore.

3.3. A solid cement plug shall be placed from 50 feet below a fresh water zone to 50 feet above the fresh water zone, or a 100 foot cement plug shall be centered across the base of the fresh water zone and a 100 foot plug shall be centered across the top of the fresh water zone.

3.4. At least ten sacks of cement shall be placed at the surface in a manner completely plugging the entire hole. If more than one string of casing remains at the surface, all annuli shall be so cemented.

3.5. The interval between plugs shall be filled with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore.

3.6. The hole shall be plugged up to the base of the surface string with noncorrosive fluid of adequate density to prevent migration of formation water into or through the well bore, at which point a plug of not less than 50 feet of cement shall be placed.

3.7. Any perforated interval shall be plugged with cement and any open hole porosity zone shall be adequately isolated to prevent migration of fluids.

3.8. A cement plug not less than 100 feet in length shall be centered across the casing stub if any casing is cut and pulled, a second plug of the same length shall be centered across the casing shoe of the next larger casing.

4. An alternative method of plugging, required under a federal or Indian lease, will be accepted by the division.

5. Within 30 days after the plugging of any well has been accomplished, the owner or operator shall file a subsequent report of plugging with the division. The report shall give a detailed account of the following items:

5.1. The manner in which the plugging work was carried out, including the nature and quantities of materials used in plugging and the location, nature, and extent by depths, of the plugs.

5.2. Records of any tests or measurements made.

5.3. The amount, size, and location, by depths of any casing left in the well.

5.4. A statement of the volume of mud fluid used.

5.5. A complete report of the method used and the results obtained, if an attempt was made to part any casing.

6. Upon application to and approval by the division, and following assumption of liability for the well by the surface owner, a well or other exploratory hole that may safely be used as a fresh water well need not be filled above the required sealing plugs set below the fresh water formation. The owner of the surface of the land affected may assume liability for any well capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

7. Unless otherwise approved by the division, all abandoned wells shall be marked with a permanent monument showing the well number, location, and name of the lease. The monument shall consist of a portion of pipe not less than four inches in diameter and not less than ten feet in length, of which four feet shall be above the ground level and the remainder shall be securely embedded in cement. The top of the pipe must be permanently sealed.

8. If any casing is to be pulled after a well has been abandoned, a notice of intent to pull casing must be filed with the division and its approval obtained before the work is commenced.

8.1. The notice shall include full details of the contemplated work. If a log of the well has not already been filed with the division, the notice shall be accompanied by a copy of the log showing all casing seats as well as all water strata and oil and gas shows.

8.2. Where the well has been abandoned and liability has been terminated with respect to the bond previously furnished under R649-3-1, a $10,000 plugging bond shall be filed with the division by the applicant.

R649-3-25. Underground Disposal of Drilling Fluids.

1. Operators shall be permitted to inject and dispose of reserve pit drilling fluids downhole in a well upon submitting an application for such operations to the division and obtaining its approval. Injection of reserve pit fluids shall be

considered by the division on a case-by-case basis.

2. Each proposed injection procedure will be reviewed by the division for conformance to the requirements and standards for permitting disposal wells under R649-5-2 to assure protection of fresh-water resources.

3. The subsurface disposal interval shall be verified by temperature log, or suitable alternative, during the disposal operation.

4. The division shall designate other conditions for disposal, as necessary, in order to ensure safe, efficient fluid disposal.

R649-3-26. Seismic Exploration.

1. Form 1, Application for Permit to Conduct Seismic Exploration shall be submitted to the division by the seismic contractor at least seven days prior to commencing any type of seismic exploration operations. In cases of emergency, approval may be obtained either verbally or by telegraphic communication.

1.1. Changes of plans or line locations may be implemented in an emergency situation without division approval.

1.2. Within five days after the change is performed, the seismic contractor shall submit written notice of the change to the division.

1.3. The permit may be revoked at any time by the division for failure to comply with the rules and orders of the board.

1.4. Any request to deviate from the general plugging and operations procedures of these rules shall be included on the permit application.

1.5. The name, address, and telephone number of the seismic contractor's local contact shall be submitted to the division as soon as determined if not available when the permit application is submitted.

1.6. After review of the application for a seismic permit, the division may require written permission of the owner of the surface of the affected land if it is determined that the seismic operation may significantly impact any building, pipeline, water well, flowing spring, or other cultural or natural feature in the area.

1.7. The permit will be in effect for six months from the date of approval. The permit may be extended upon application to and approval by the division.

2. Bonding shall not be required for seismic exploration requiring the drilling of shot holes.

3. Seismic contractors shall give the division at least 24 hours advance notice of the plugging of seismic holes. The notice shall include the date and time the plugging activities are expected to commence, the name and address of the seismic contractor responsible for the holes, and, if different, the name and address of the hole plugging company.

4. Unless the seismic contractor can prove to the satisfaction of the division that another method will provide adequate protection to ground water resources and other man-made or natural features and will provide long-term land stability, the following procedures shall be required for the conduct of seismic operations and hole plugging:

4.1. Seismic contractors shall take reasonable precautions to avoid conducting shot hole operations closer than 1,320 feet to any building, pipeline, water well, flowing spring, or other cultural/natural feature, e.g., a historical monument, marker, or structure, that may be adversely affected by the seismic operations.

4.2. When nonartesian water is encountered while drilling seismic shot holes, the holes shall be filled from the bottom up with a high grade bentonite/water slurry mixture.

4.3. The slurry shall have a density that is at least four percent greater than the density of fresh water and shall have a marsh funnel viscosity of at least 60 seconds per quart.

4.4. The density and viscosity of the slurry are to be measured prior to adding cuttings. Cuttings not added to the slurry are to be disposed of in accordance with R649-3-26-4.6.

4.5. Upon approval by the division, any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of the substitute plugging material are at least comparable to those of the bentonite/water slurry.

4.6. The hole shall be filled with the substitute plugging material from the bottom up to a depth of three feet below ground level.

4.7. A nonmetallic permaplug shall be set at a depth of three feet. The remaining hole shall be filled and tamped to the surface with cuttings and native soil.

4.8. The permaplug shall be imprinted with an approved identification number or mark.

4.9. When drilling with air only, and in completely dry holes, plugging may be accomplished by returning the cuttings to the holes, tamping the returned cuttings to the depth of three feet below ground level, and setting the permaplug topped with more cuttings and soil. A small mound shall be left over the hole for settling allowance.

4.10. If artesian flow, water flowing at the surface, is encountered in the drilling of any seismic hole, cement shall be used to seal off the water flow to prevent cross-flow, erosion, or contamination of fresh water supplies.

4.11. Unless severe weather conditions prevent access, the holes shall be cemented immediately.

4.12. Approval may be granted to seismic operator to plug a flowing hole in another manner, if it is proved to this division that the alternate method will provide adequate protection to ground water resources and provide long term land stability.

4.13. The owner of the surface of the land affected may assume liability for a seismic hole capable of conversion to a water well by sending a letter assuming such liability to the division and by filing an application with and obtaining approval for appropriation of underground water from the Division of Water Rights.

4.14. Shotholes shall be properly plugged and abandoned as soon as practical after the shot has been fired.

4.15. No shothole shall be left unplugged for more than 30 days without approval of the division.

4.16. Until properly plugged, shotholes shall be covered with a tin hat or other similar cover.

4.17. The hats shall be imprinted with the seismic contractor's name or initials.

4.18. Any slurry, drilling fluids, or cuttings that are deposited on the surface around the seismic hole shall be raked or otherwise spread out to a height of not more than one inch above the surface, so that the growth of the natural grasses or foliage will not be impaired.

4.19. Restoration plans required by the Mined Land Reclamation Act, Chapter 8 of Title 40, or by any other surface management agency will be accepted by the division.

4.20. The surface area around each seismic shothole shall be reclaimed and reseeded to its original condition insofar as such restoration is practical and is required by the surface management agency.

4.21. All flagging, stakes, cables, cement, or mud sacks shall be removed from the drill site and disposed of in an acceptable manner.

5. Upon application to the division, approval may be obtained for preplugging of shotholes using coarse bentonite material or a suitable alternative used in the industry. Preplugging of holes in this manner shall be performed according to the following procedures:

5.1. A sales receipt indicating proof of purchase of an adequate amount of coarse bentonite to properly plug all shotholes shall be submitted to the division upon request.

5.2. For shotholes drilled with air that are completely dry, the seismic contractor shall have the option of preplugging with the coarse bentonite material or of using an alternate plugging material under R649-3-26-4.3.

5.3. For conventionally drilled, wet holes, enough approved material shall be used to cover the initial water level, i.e., the depth of the initial water level in the hole prior to adding coarse bentonite material shall be equal to the final plug depth.

5.4. An additional ten feet of approved material shall be placed above this depth and hole cuttings shall be used to fill the remainder of the hole to a depth of three feet below ground level.

5.5. A nonmetallic plug imprinted with an approved identification number or mark shall be installed at this depth.

5.6. The remaining three feet of hole shall be filled and tamped to the surface with cuttings and native soil.

5.7. The remaining cuttings shall be raked or spread to a height not to exceed one inch above ground level.

5.8. When using heliportable drills and insufficient cuttings are available, the hole shall be preplugged with bentonite plugging material or an approved alternate material to a depth of three feet below ground level.

5.9. Installation of a nonmetallic plug and filling the remainder of the hole shall be performed as required by R649-3-26-5.3.

5.10. The coarse bentonite plugging material shall have the following specifications - chemically unaltered sodium bentonite, coarse ground, three quarter inch maximum size, not more than 19% moisture content and not more than 15% inert solids by volume.

6. Form 2, Seismic Exploration Completion Report shall be submitted to the Division within 60 days after completion of each seismic exploration project. The report shall include: Certification by the seismic contractor that all shot holes have been plugged as prescribed by the division.

R649-3-27. Multiple Mineral Development.

1. Drilling operations conducted in areas designated by the board for multiple mineral development shall comply with all rules or orders of the board for drilling, casing, cementing, and plugging except as the general rules or orders may be modified by this rule.

2. It is the policy of the division to promote the development of all mineral resources on land under its jurisdiction. Consistent with that policy, operators engaged in oil and gas operations on lands on which operators are exploring for and developing mineral resources other than oil and gas may enter into a cooperative agreement with these other operators with respect to multiple mineral development. The agreement shall define:

2.1. The extent and limits of liability when one operator, either intentionally or unintentionally, interferes with or damages the deposits of another.

2.2. The coordination of access to and development of the area.

2.3. Mitigation of surface impact including but not limited to issues pertaining to relocation of natural gas pipeline gathering and distribution systems and other surface facilities occasioned by placement of a spent shale pile; phased or coordinated surface occupancy so as to allow each operator to enjoy his respective mineral estate with the least disruption of operations and damage to the oil and gas deposits, either directly or indirectly, through waste; and limitation of oil and gas operations in areas of concentrated surface oil shale facilities.

2.4. Mitigation of subsurface impact including but not limited to issues pertaining to the interface in the underground environment of oil shale mining operations with other mineral operations.

2.5. The extent of exchange of geological, engineering, and production data.

2.6. Other cooperative efforts consistent with multiple mineral development under the rules and orders of the board pertaining to oil and gas operations, oil shale operations, and mined land reclamation.

3. The division, together with the Division of Forestry, Fire and State Lands, and School and Institutional Trust Lands Administration shall be signatory to the agreement, where applicable.

4. In the event the operators cannot agree on cooperative development of their respective mineral deposits, or having once entered into a cooperative agreement subsequently disagree on the application of the terms and provisions thereof, any operator whose oil and gas or mining operation or deposit may be adversely affected or damaged by the operations of another operator may apply to the board for, or the board may on its own motion enter an order, after notice and hearing, delineating the respective rights and obligations of all operators with respect to development of all minerals concerned.

5. After notice and hearing the board may modify its order to more effectively carry out the policies of multiple mineral development.

R649-3-28. Designated Potash Areas.

1. In any area designated as a potash area, either by the board, or an appropriate state or federal government agency, all wells shall be drilled, cased, cemented, and plugged in accordance with the rules and orders of the board. The following minimum requirements and definitions shall also apply to the drilling, logging, casing, and plugging operations within the Salt Section to protect against migration of oil, gas, or water into or within any formation or zone containing potash. As used in this rule, Salt Section shall mean the Paradox Salt Section of Pennsylvanian Age.

2. Any drilling media used through the Salt Section shall be such that sodium chloride is not soluble in the media at normal temperatures.

3. Gamma ray-neutron, gamma ray-sonic or other appropriate logs shall be run promptly through the Salt Section. One field copy of the log through the Salt Section shall be submitted to the division within ten days, or upon the request of the division, whichever is the earlier.

4. A directional survey shall be run from a point at least 20 feet below the Salt Section to the surface. The survey shall be filed with the division prior to completion or plugging and abandonment of the well.

5. In addition to the requirements of the R649-3-8, any casing set into or through the Salt Section shall be cemented solidly through the Salt Section above the casing shoe.

6. Any cement used in setting casing or in plugging that comes in contact with the Salt Section shall be of such chemical composition as to avoid dissolution of the Salt Section and to provide weight, strength, and physical properties sufficient to protect uphole formations and prevent blowouts or uncontrolled flows.

7. If a well is dry, cement plugs at least 200 feet in length shall be placed across the top and the base of the Salt Section, across any oil, gas or water show, and across any potash zone.

7.1. Plugs shall not be required inside a properly cemented casing string. The division shall approve the location of the plugs after examining the appropriate logs, drilling and testing records for the well.

7.2. No well shall be temporarily abandoned with open hole in the Salt Section.

8. The division may inspect the drilling operations at all times, including any mining operations that may affect any drilling or producing well bores. A potash owner, if contributing by agreement to the logging and directional survey costs of a well, may inspect the well for compliance with this rule.

9. Before commencing drilling operations for oil or gas on any land within designated potash area, the operator shall furnish by registered mail, a copy of the APD, together with the plat or map required under R649-3-4, to all potash owners and lessees whose interests are within a radius of 2,640 feet of the proposed well.

10.After proper notice and hearing, the board may modify this rule for a particular well or area by requiring that greater or lesser precautions be taken to prevent the escape of oil, gas, or water from one stratum into another. The board may also expand or contract from the designated potash areas.

R649-3-29. Workable Coal Beds.

1. Prior to commencing drilling operations for oil and gas on any lands where there are mine workings, the operator shall furnish a copy of the APD, a plat or map as required under R649-3-4, and a designation of the proposed angle and direction of the well, if the well is to be deviated substantially from a vertical course, to all coal owners and lessees whose interests are within a radius of 5,280 feet of the proposed well.

2. A well penetrating one or more workable coal beds or mine workings shall be drilled to a depth and shall be of a size, to permit the placing of casing in the hole at the points and in the manner necessary to exclude all oil, gas or gas pressure from the coal bed, other than oil, gas or gas pressure originating in the coal bed.

3. Unless otherwise authorized by the division, the casing run through a coal bed shall be seated at least 50 feet into the closest impervious formation below the coal bed. The casing shall be cemented solidly through the coal bed to a height at least 50 feet into the closest impervious formation above the coal bed.

4. A directional survey or a cement bond log shall be performed and furnished to the division upon written request by the division.

5. Upon penetrating a coal bed the operator shall notify the division, in writing, before completing or plugging and abandoning the well.

R649-3-30. Underground Mining Operations.

1. Prior to commencing drilling operations for oil and gas on any land where there are known or suspected underground mining operations, solution mining operations or surface mining operations, including solar evaporation ponds, the operator shall include in the APD or in a separate cover letter, any information known to the operator concerning the name and address of the owner or operator of the mining workings.

2. The division may, with the concurrence of the operator, change the surface location of the proposed well if there appears to be any possibility of interference between the proposed well bore and the mine workings.

R649-3-31. Designated Oil Shale Areas.

1. Designated oil shale areas are subject to the general drilling, plugging and other performance standards described in this section, except where the board has adopted, by order, specific standards for individual oil shale areas. As of June 8, 2001, the board has adopted specific standards for individual oil shale areas by board orders in Cause Nos. 190-5(b), 190-3, and 190-13. The board may adopt specific standards in other areas, or modify the above orders, in the future.

2. Lands may be designated as an oil shale area by the board, either upon its own motion, or upon the petition of an interested person following notice and hearing.

3. As used in this rule, oil shale section means the sequence of strata containing oil shale beds, including any interbedded strata not containing oil shale, consisting of the Parachute Creek Member of the Green River Formation of Tertiary Age, defined as the stratigraphic equivalent of the interval between 1,428 feet and 2,755 feet below the Kelly Bushing on the induction-electrical log of the Ute Trail No. 10 API No. 43-047-15382 well drilled by Dekalb Agricultural Association, Inc. and located in the NE 1/4 of Section 34, Township 9 South, Range 21 East, S.L.M., Uintah County, Utah. The Mahogany Zone is defined as the stratigraphic equivalent of the interval between 2,230 feet and 2,360 feet below the Kelly Bushing on the induction-electrical log of the well cited above.

4. For purposes of identifying the oil shale intervals, an appropriate electrical log shall be run through the oil shale section. One field copy of the log through the oil shale section shall be made available to the division pursuant to R649-3-23 or upon written request by the division.

5. On all wells that are intentionally deviated from the vertical within the oil shale section, pursuant to the provisions of R649-3-10 and R649-3-11, a directional survey shall be run from a point at least 20 feet below the oil shale section to the surface and shall thereafter be filed with the division within 20 days after reaching total depth.

6.Any oil shale lessee or operator whose oil shale mine workings reach a distance of 2,640 feet from a producing well or any oil and gas lessee or operator whose producing well is approached by oil shale mine workings within a distance of 2,640 feet shall request agency action with the board. The board may promulgate an order after notice and hearing with respect to the running of a directional survey through the oil shale section, the cost and potential resource loss liability and responsibility as to the oil and gas operator and the oil shale lessee or operator and any other issues regarding multiple mineral development.

7. The directional survey shall be the confidential property of the parties paying for the survey and shall be kept confidential until released by said parties or the division.

8. In addition to the requirements pertaining to the cementing of casing contained in the R649-3-8, any casing set into or through the oil shale section shall be cemented over the entire oil shale section.

9. If a well is dry, junked or abandoned, a cement plug shall be placed across that portion of the oil shale section extending 200 feet above and 200 feet below the longitudinal center of the Mahogany Zone. The cement plug shall not be required inside a casing cemented in accordance with R649-3-31-8. When the casing is cemented, cement plugs 200 feet in length shall be centered across the top and across the base of the Parachute Creek Member of the Green River Formation.

10. In the event the casing is not cemented in accordance with R649-3-31-8, the division shall approve the method and procedure to prevent the migration of oil, gas, and other substances through the wellbore from one formation to another.

11. The division shall approve the adequacy and location of the cement plugs after examining the appropriate logs and drilling and testing records for the well, to ensure that the oil shale section is adequately protected.

12. Upon written request of the owner or operator under R649-8-6, the division shall keep all well logs confidential. The division may inspect the drilling operations at all times,

including any mining operations that may affect drilling or producing well bores.

13. Before commencing drilling operations for oil or gas on any land within a designated oil shale area, the operator shall furnish a copy of the APD, together with a plat or map as directed under R649-3-4, to all oil shale owners or their lessees whose interests are within a radius of 2,640 feet of the proposed well. The operator shall furnish a notice of intention to plug and abandon any well in the oil shale area, as required under R649-3-24-1, to the owners or their lessees prior to commencement of plugging operations.

14. The operator shall use generally accepted techniques for vertical or directional drilling as defined under R649-3-10 and R649-3-11 to maintain the well bore within an intact core of a mine pillar. Within 20 days of reaching the total depth or before completion of the well, whichever is the earlier, a directional survey shall be run as prescribed by this rule.

R649-3-32. Reporting of Undesirable Events.

1. The division shall be notified of all fires, leaks, breaks, spills, blowouts, and other undesirable events occurring at any oil or gas drilling, producing, or transportation facility, or at any injection or disposal facility.

2. Immediate notification shall be required for all major undesirable events as outlined in R649-3-32-5.

2.1. Immediate notification shall mean a verbal report submitted to the division as soon as practical but within a maximum of 24 hours after discovery of an undesirable event.

2.2. A complete written report of the incident shall also be submitted to the division within five days following the conclusion of an undesirable event.

2.3. The requirements for written reports are specified in R649-3-32-4.

3. Subsequent notification shall be required for all minor undesirable events as outlined in R649-3-32-6.

3.1. Subsequent notification shall mean a complete written report of the incident submitted to the division within five days following the conclusion of an undesirable event.

3.2. The requirements for written reports are specified in R649-3-32-4.

4. Complete written reports of undesirable events may be submitted on Form 9, Sundry Notice and Report on Wells. The report shall include:

4.1. The date and time of occurrence and, if immediate notification was required, the date and time the occurrence was reported to the Division.

4.2. The location where the incident occurred described by section, township, range, and county.

4.3. The specific nature and cause of the incident.

4.4. A description of the resultant damage.

4.5. The action taken, the length of time required for control or containment of the incident, and the length of time required for subsequent cleanup.

4.6. An estimate of the volumes discharged and the volumes not recovered.

4.7. The cause of death if any fatal injuries occurred.

5. Major undesirable events include the following:

5.1. Leaks, breaks or spills of oil, salt water or oil field wastes that result in the discharge of more than 100 barrels of liquid, that are not fully contained on location by a wall, berm, or dike.

5.2. Equipment failures or other accidents that result in the flaring, venting, or wasting of more than 500 Mcf of gas.

5.3. Any fire that consumes the volumes of liquid or gas specified in R649-3-32-5.1 and R649-3-32-5.2.

5.4. Any spill, venting, or fire, regardless of the volume involved, that occurs in a sensitive area stipulated on the approval notice of the initial APD for a well, e.g., parks, recreation sites, wildlife refuges, lakes, reservoirs, streams, urban or suburban areas.

5.5. Each accident that involves a fatal injury.

5.6. Each blowout, loss of control of a well.

6. Minor undesirable events include the following:

6.1. Leaks, breaks or spills or oil, salt water, or oil field wastes that result in the discharge of more than ten barrels of liquid and are not considered major events in R649-3-32-5.

6.2 Equipment failures or other accidents that result in the flaring, venting or wasting of more than 50 Mcf of gas and are not considered major events in R649-3-32-5.

6.3. Any fire that consumes the volumes of liquid or specified in R649-3-32-6.1 and R649-3-32-6.2.

6.4. Each accident involving a major or life-threatening injury.

R649-3-33. Drilling Procedures in the Great Salt Lake.

1. For all drilling activities proposed within the Great Salt Lake, the APD required by R649-3-4 shall be filed at least 30 days prior to the date on which the operator intends to commence operations. As part of the APD, the operator shall include:

1.1. The name of the drilling contractor and the number and type of rig to be used.

1.2. An illustration of the boundaries of all state or federal parks, wildlife refuges, or waterfowl management areas within one mile of the proposed well location.

1.3. An illustration of the locations of all evaporation pits, producing wells, structures, buildings, and platforms within one mile of the proposed well location.

1.4.An oil spill emergency contingency plan.

2. Unless permitted by the board after notice and hearing, no well shall be drilled that has a surface location:

2.1. Within 1,320 feet from an evaporation pit without the consent of the operator of such pit.

2.2. Within one mile from the boundary of a state or federal park, wildlife refuge, or waterfowl management area without the consent of the appropriate state or federal regulatory agency.

2.3. Within three miles of Gunnison Island during the Pelican nesting season (March 15 through September 30) or within one mile from said island at any other time.

2.4. Within any area south of the Salt Lake Base Meridian Line.

2.5. Within any area north of Township 10 North.

2.6. Within one mile inside of what would be the water's edge if the water level of the Great Salt Lake were at the elevation of 4,193.3 feet above sea level.

3. Well casing and cementing shall be subject to the following special requirements for the purpose of this rule, the several casing strings in order of normal installation are drive or structural casing, conductor casing, surface casing, intermediate casing, and production casing. All depths refer to true vertical depth:

3.1. The drive or structural casing shall be set by drilling, driving or jetting to a minimum depth of 50 feet below the floor of the lake bed or to such greater depth required to support unconsolidated deposits and to provide hole stability for initial drilling operations. If drilled in, the drilling fluid shall be a type that will not pollute the lake; in addition, a quantity of cement sufficient to fill the annular space back to the lake floor with returns circulated, must be used.

3.2. The conductor casing shall be set at a minimum depth of 200 feet below the floor of the lake, and shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated.

3.3. The surface casing shall be set at a minimum depth of 500 feet if the proposed depth of the well is less than 7,000 feet; or 1,000 feet if the proposed depth is over 7,000 feet but

less than 11,000 feet; or 1,500 feet if the depth is 11,000 feet. The casing shall be cemented with a quantity sufficient to fill the annular space back to the lake surface with returns circulated, and the bottom of the casing shall be in competent rock.

3.4. The intermediate and production casing shall be set at any time when drilling below the surface casing and hole conditions justify setting casing. This casing will be cemented in such a manner that all hydrocarbons, water aquifers, lost-circulation or zones of significant porosity and permeability, significant beds containing priority minerals, and abnormal pressure intervals are covered or isolated.

3.5. Prior to drilling the plug after cementing, all casing strings except the drive or structural casing, shall be pressure tested. This test shall not exceed the rated working pressure of the casing. If the pressure declines more than ten percent in 30 minutes, or if there are other indications of a leak, corrective measures must be taken until a satisfactory test is obtained. All casing pressure tests shall be recorded on the driller's log.

4. Blowout preventers and related well control equipment shall be installed, and tested in a manner necessary to prevent blowouts and shall be subject to the following special conditions:

4.1. Prior to drilling below the surface casing, blowout prevention equipment shall be installed and maintained ready for use until drilling operations are completed.

4.2. An inside blowout preventer assembly and a full opening string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted.

4.2.1. Valves shall be maintained on the rig floor to fit all pipe in the drill string.

4.2.2. A top kelly cock shall be installed below the swivel and another at the bottom of the kelly of such design that it can be run through the blowout preventers.

4.3. Before drilling below the surface casing the blowout prevention equipment shall include a minimum of:

4.3.1. Three remotely and manually controlled, hydraulically operated blowout preventers with a rated working pressure that exceeds the maximum anticipated surface pressure, including one equipped with pipe rams, one with blind rams and one hydril type.

4.3.2. A drilling spool with side outlets, if side outlets are not provided in the blowout preventer body.

4.3.3. A choke manifold.

4.3.4. A kill line.

4.3.5. A fill-up line.

4.4. Ram-type blowout preventers and related control equipment shall be tested to the rated working pressure of the stack assembly or to the working pressure of the casing, whichever is the lesser, at the following times:

4.4.1. When installed.

4.4.2. Before drilling out after each string of casing is set.

4.4.3. Not less than once each week while drilling.

4.4.4. Following repairs that require disconnecting a pressure seal in the assembly.

4.5. The hydril-type blowout preventer shall be tested to 70 percent of the pressure testing requirements of ram-type blowout preventers. The hydril-type blowout preventer shall be actuated on the drill pipe once each week.

4.6. Accumulators or accumulators and pumps shall maintain a reserve capacity at all times to provide for repeated operation of hydraulic preventers.

4.7. A blowout prevention drill shall be conducted weekly for each drilling crew to insure that all equipment is operational and that crews are properly trained to carry out emergency duties. All blowout preventer tests and crew drills shall be recorded on the driller's log.

5. The characteristics and use of drilling mud and the conduct of related drilling procedures shall be such as are necessary to maintain the well in a safe condition to prevent uncontrolled blowouts of any well. Quantities of mud materials sufficient to insure well control shall be maintained and readily accessible for use at all times.

6. Mud testing equipment shall be maintained on the derrick floor at all times, and mud tests consistent with good operating practice shall be performed daily, or more frequently as conditions warrant. The following mud system monitoring equipment must be installed, with derrick floor indicators, and used throughout the period of drilling after setting and cementing the surface casing:

6.1. A recording mud pit level indicator including a visual and audio warning device to determine mud pit volume gains and losses.

6.2. A mud return indicator to determine when returns have been obtained, or when they occur unintentionally, and additionally to determine that returns essentially equal the pump discharge rate.

7. In the conduct of all oil and gas operations, the operator shall prevent pollution of the waters of the Great Salt Lake. The operator shall comply with the following pollution prevention requirements:

7.1. Oil in any form, liquid or solid wastes containing oil, shall not be disposed of into the waters of the lake.

7.2. Liquid or solid waste materials containing substances that may be harmful to aquatic life or wildlife, or injurious in any manner to life and property, or that in any way unreasonably adversely affects the chemicals or minerals in the lake shall not be disposed of into the waters of the lake.

7.3. Waste materials, exclusive of cuttings and drilling media, shall be transported to shore for disposal.

8. All spills or leakage of oil and liquid or solid pollutants shall be immediately reported to the division. A complete written statement of all circumstances, including subsequent clean-up operation, shall be forwarded to said agencies within 72 hours of such occurrences.

9. Standby pollution control equipment consistent with the state of the art, shall be maintained by, and shall be immediately available to, each operator.

R649-3-34. Well Site Restoration.

1. The operator of a well shall upon plugging and abandonment of the well restore the well site in accordance with these rules.

2. For all land included in the well site for which the surface is federal, Indian, or state ownership, the operator shall meet the well site restoration requirements of the appropriate surface management agency.

3. For all land included in the well site for which the surface is fee or private ownership, the operator shall meet the well site restoration requirements of the private landowner or the minimum well site restoration requirements established by the division.

4. Well site restoration on lands with fee or private ownership shall be completed within one (1) year following the plugging of a well unless an extension is approved by the division for just and reasonable cause.

5. These rules shall not preclude the opportunity for a private landowner to assume liability for the well as a water well in accordance with R649-3-24.6.

6. The operator shall make a reasonable effort to establish surface use agreements with the owners of land included in the well site prior to the commencement of the following actions on fee or private surface:

6.1. Drilling a new well.

6.2. Reentering an abandoned well.

6.3. Assuming operatorship of existing wells.

7. Upon application to the division to perform any of the aforementioned and prior to approval of such actions by the division, the operator shall submit an affidavit to the division stating whether appropriate surface use agreements have been established with and approved by the surface landowners of the well site.

8. If necessary and upon request by the division, the operator shall submit a copy of the established surface use agreements to the division.

9. If no surface use agreement can be established, the division shall establish minimum well site restoration requirements for any well located on fee or private surface for the purposes of final bond release.

10. Established surface use agreements may be modified or terminated at any time by mutual consent of the involved parties; however, the operator shall notify the division if such is the case and if a surface use agreement is terminated without a new agreement established, the division shall establish minimum well site reclamation requirements.

11. The operator shall be responsible for meeting the requirements of any surface use agreement, and it shall be assumed by the division until notified otherwise that surface use agreements remain in full force and effect until all the requirements of the agreement are satisfied or until the agreement has been terminated by mutual consent of the involved parties.

12. The surface use agreement shall stipulate the minimum well site restoration to be performed by the operator in order to allow final release of the bond.

13. The final bond release by the division shall include a determination by the division whether or not the operator has met the requirements of an established surface use agreement, and the division may suspend final bond release until the operator has completed all the requirements of the surface use agreement.

14. The agreement may state requirements for well site grading, contouring, scarification, reseeding, and abandonment of any equipment or facilities for which the landowner agrees to assume liability.

15. The agreement shall not address operations regulated by the rules and orders of the board such as:

15.1. Disposal of drilling fluid, produced fluid, or other fluid waste associated with the drilling and production of the well.

15.2. Reclamation or treating of waste crude oil.

15.3. Any other operation or condition for which the board has jurisdiction.

16. If the operator cannot establish surface use agreements then the operator shall so notify the division.

17. Within 30 days of the notification or as soon as weather conditions permit, the division shall conduct an inspection and evaluation of the well site in order to establish minimum well site restoration requirements for the purpose of final bond release.

18. The operator shall be given notice by the division of the date and time of the inspection, and if the operator cannot attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

19. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner cannot attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

20. The evaluation shall consider the condition of the land prior to disturbance, the extent of proposed disturbance, the degree of difficulty to conduct complete restoration, the potential for pollution, the requirements for abating pollution, and the possible land use after plugging and restoration are completed.

21. Within 30 days after performing the inspection, the division shall provide the operator with the results of the inspection and the evaluation listing the minimum well site restoration requirements established by the division.

22. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the minimum well site restoration requirements established by the division.

23. If any person disagrees with the results of the inspection and the evaluation and desires a reconsideration of the minimum well site restoration requirements established by the division, such person may submit a request to the board for a hearing and order to modify the requirements.

24. The board, after proper notice and hearing, may issue an order modifying the minimum well site restoration requirements established by the division.

25. The minimum well site restoration requirements established by the division or by board order shall be considered part of any permit granted by the division to conduct operations at a well site, and the inability of the operator to meet such requirements shall be considered grounds for forfeiture of the bond.

26.If the minimum well site restoration requirements suggest to the division that bond coverage for a well should be increased, the division shall take action as stated in R649-3-1.

R649-3-35. Wildcat Wells.

1. For purposes of qualifying for a severance tax exemption under Section 59-5-102(5)(b), an operator must file an application with the division for designation of a wildcat well.

1.1. The application may be filed prior to drilling the well, and a tentative determination of the wildcat designation will be issued at that time. An application or request for final designation of wildcat status as appropriate, must be filed at the time of filing of Form 8, Well Completion or Recompletion Report and Log.

1.2. The application shall contain, where applicable, the following information:

1.2.1. A plat map showing the location of the well in relation to producing wells within a one mile radius of the wellsite.

1.2.2. A statement concerning the producing formation or formations in the wildcat well and also the producing formation or formations of the producing wells in the designated area, including completion reports and other appropriate data.

1.2.3. Stratigraphic cross sections through the producing wells in the designated area and the proposed wildcat well.

1.2.4. A statement as to whether the well is in a known geologic structure. However, whether the well is in a known geologic structure shall not be the sole basis of determining whether the well is a wildcat.

1.2.5. Bottomhole pressures, as applicable, in a wildcat well compared to the wells producing in the designated area from the same zone.

1.2.6. Any other information deemed relevant by the applicant or requested by the division.

2. Information derived from well logs, including certain information in completion reports, stratigraphic cross sections, bottomhole pressure data, and other appropriate data provided in R649-3-35-1 will be held confidential in accordance with R649-2-11 at the request of the operator.

3. The division shall review the submitted information

and advise the operator and the State Tax Commission of its decision regarding the wildcat well designation as related to Section 59-5-102(5)(b).

4. The division is responsible for approval of a request for designation of a well as a wildcat well. If the operator disagrees with the decision of the division, the decision maybe appealed to the board. Appeals of all other tax-related decisions concerning wildcat wells should be made to the State Tax Commission.

R649-3-36. Shut-in and Temporarily Abandoned Wells.

1. Wells may be initially shut-in or temporarily abandoned for a period of twelve (12) consecutive months. If a well is to be shut-in or temporarily abandoned for a period exceeding twelve (12) consecutive months, the operator shall file a Sundry Notice providing the following information:

1.1. Reasons for shut-in or temporarily abandonment of the well,

1.2. The length of time the well is expected to be shut-in or temporarily abandoned, and

1.3. An explanation and supporting data, for showing the well has integrity, meaning that the casing, cement, equipment condition, static fluid level, pressure, existence or absence of Underground Sources of Drinking Water and other factors do not make the well a risk to public health and safety or the environment.

2. After review the Division will either approve the continued shut-in or temporarily abandoned status or require remedial action to be taken to establish and maintain the well's integrity.

3. After five (5) years of nonactivity or nonproductivity, the well shall be plugged in accordance with R649-3-24, unless approval for extended shut-in time is given by the Division upon a showing of good cause by the operator.

4. If after a five (5) year period the well is ordered plugged by the Division, and the operator does not comply, the operator shall forfeit the drilling and reclamation bond and the well shall be properly plugged and abandoned under the direction of the Division.

R649-3-37. Enhanced Recovery Project Certification.

1. In order for incremental production achieved from an enhanced recovery project to qualify for the severance tax rate reduction provided under Subsection 59-5-102(7), the operator on behalf of the producers shall present evidence demonstrating that the recovery technique or techniques utilized qualify for an enhanced recovery determination and the Board must certify the project as an enhanced recovery project.

2. For enhanced recovery projects certified by the Board after January 1, 1996:

2.1. As part of the process of certifying incremental production that qualifies for a reduction in the severance tax rate under Subsection 59-5-102(7), the operator shall furnish the Division:

2.1.1. An extrapolation (projection) and tabulation of expected non-enhanced recovery of oil and gas production from the project.

2.1.2. The projection shall be for not less than seventy-two (72) months commencing with the first month following the project certification by the Board.

2.1.3. The projection shall be based on production history of all wells within the project area for not less than twelve (12) months immediately preceding either certification or commencement of the project; reservoir and production characteristics; and the application of generally accepted petroleum engineering practices.

2.1.4. The projected production volumes approved by the division shall serve as the base level production for purposes of determining the incremental oil and gas production that qualifies for a reduction in the severance tax rate.

2.2. The operator shall provide a statement as to all assumptions made in preparing the projection and any other information concerning the project that the division may reasonably require in order to evaluate the operator's projection.

2.3. An operator's request for incremental production certification may be approved administratively by the Director or authorized agent. The Director or authorized agent shall review the request within 30 days after its receipt and advise the operator of the decision. If the operator disagrees with the Director or authorized agent's decision, the operator may request a hearing before the Board at its next regularly scheduled hearing. The Director or authorized agent may also refer the matter to the Board if a decision is in doubt.

2.4. Upon approval of a request for incremental production certification, the Director or authorized agent shall forward a copy of the certification to the Utah Tax Commission.

R649-3-38. Surface Owner Protection Act Provisions.

1. These rules and all subsequent revisions as approved by the board are developed pursuant to the requirements of the Surface Owner Protection Act of 2012 in Title 40, Chapter 6. It is the intent of the board and the division to encourage owners or operators and surface land owners to enter into surface use agreements. Surface use agreements should fairly consider the respective rights of the owner or operator and the surface land owner and also comply with the requirements of R649-3-34.

2. For the purposes of R649-3-38, these definitions are utilized.

2.1. "Crops" means any growing vegetative matter used for an agricultural purpose, including forage for grazing and domesticated animals.

2.2. "Oil and gas operations" means to explore for, develop, or produce oil and gas.

2.3. "Surface land" means privately owned land overlying privately owned oil and gas resources, upon which oil and gas operations are conducted, and owned by a surface land owner.

2.4. "Surface land owner" means a person who owns, in fee simple absolute, all or part of the surface land as shown by the records of the county where the surface land is located. Surface land owner does not include the surface land owner's lessee, renter, tenant, or other contractually related person.

2.5. "Surface land owner's property" means a surface land owner's surface land, crops on the surface land, and existing improvements on the surface land.

2.6. "Surface use agreement" means an agreement between an owner or operator and a surface land owner addressing the use and reclamation of surface land owned by the surface land owner and compensation for damage to the surface land caused by oil and gas operations that result in loss of the surface land owner's crops on the surface land, loss of value of existing improvements owned by the surface land owner on the surface land, and permanent damage to the surface land.

3. Oil and gas operations shall be conducted in such manner as to prevent unreasonable loss of a surface land owner's crops on surface land, unreasonable loss of value of existing improvements owned by a surface land owner on surface land, and unreasonable permanent damage to surface land.

4. In accordance with Section 40-6-20, an owner or operator may enter onto surface land under which the owner

or operator holds rights to conduct oil and gas operations and use the surface land to the extent reasonably necessary to conduct oil and gas operations and consistent with allowing the surface land owner the greatest possible use of the surface land owner's property, to the extent that the surface land owner's use does not interfere with the owner's or operator's oil and gas operations.

4.1. Except as is reasonably necessary to conduct oil and gas operations, an owner or operator shall mitigate the effects of accessing the surface land owner's surface land, minimize interference with the surface land owner's use of the surface land owner's property, and compensate a surface land owner for unreasonable loss of a surface land owner's crops on the surface land, unreasonable loss of value to existing improvements owned by a surface land owner on the surface land, and unreasonable permanent damage to the surface land.

4.2. An owner or operator may but is not required to obtain location or spacing exceptions from the division or board or utilize directional or horizontal drilling techniques that are not technologically feasible, economically practicable, or reasonably available.

5. In accordance with Section 40-6-21, non-binding mediation may be requested by a surface land owner and an owner or operator, by providing written notice to the other party, if they are unable to agree on the amount of damages for unreasonable crop loss on the surface land, unreasonable loss of value to existing improvements owned by the surface land owner on the surface land, or unreasonable permanent damage to the surface land.

5.1. A mediator may be mutually selected by a surface land owner and an owner or operator from a listing of qualified mediators maintained by the division and the Utah Department of Agriculture and Food, which includes the mediators identified on the Utah State Courts website with "property" or "real estate" as an area of expertise, or a mediator may be selected from any other source.

5.2. The surface land owner and the owner or operator shall equally share the cost of the mediator's services.

5.3. The mediation provisions of this subsection do not prevent or delay an owner or operator from conducting oil and gas operations in accordance with applicable law.

6. A surface use bond shall be furnished to the division by the owner or operator, in accordance with the following provisions of Subsection R649-3-38-6.

6.1. A surface use bond does not apply to surface land where the surface land owner is a party to, or a successor of a party to:

6.1.1. A lease of the underlying privately owned oil and gas;

6.1.2. A surface use agreement applicable to the surface land owner's surface land; or

6.1.3. A contract, waiver, or release addressing an owner's or operator's use of the surface land owner's surface land.

6.2. The surface use bond shall be in the amount of $6,000 per well site and shall be conditioned upon the performance by the owner or operator of the duty to protect a surface land owner against unreasonable loss of crops on surface land, unreasonable loss of value of existing improvements, and unreasonable permanent damage to surface land.

6.3. The surface use bond shall be furnished to the division on Form 4S after good faith negotiation and prior to the approval of the application for permit to drill. The mediation process identified in R649-3-38-5 may commence and is encouraged to be completed.

6.4. The division may accept a surface use bond in the form of a cash account as provided in R649-3-1-10.2.1 or a certificate of deposit as provided in R649-3-1-10.2.3. Interest will remain within the account.

6.5. The division may allow the owner or operator, or a subsequent owner or operator, to replace an existing surface use bond with another bond that provides sufficient coverage.

6.6. The surface use bond shall remain in effect by the operator until released by the division.

6.7. The surface use bond shall be payable to the division for the use and benefit of the surface land owner, subject to the provisions of these rules.

6.8. The surface use bond shall be released to the owner or operator after the division receives sufficient information that:

6.8.1. A surface use agreement or other contractual agreement has been reached;

6.8.2. Final resolution of the judicial appeal process for an action for unreasonable damages, as defined in R649-3-38-6.2, has occurred and have been paid; or

6.8.3. Plugging and abandonment of the well is completed.

6.9. The division shall make a reasonable effort to contact the surface land owner prior to the division's release of the surface use bond.

R649-3-39. Hydraulic Fracturing.

1. Chemical disclosure.

1.1. The amount and type of chemicals used in a hydraulic fracturing operation shall be reported to www.fracfocus.org within 60 days of hydraulic fracturing completion for public disclosure.

2. Wellbore integrity.

2.1. The operator shall comply with R649-3-8, Casing Program.

1. The method of cementing casing in the hole shall be by pump and plug method, displacement method, or other method approved by the division.

2. When drilling in wildcat territory or in any field where high pressures are probable, the conductor and surface strings of casing must be cemented throughout their lengths, unless another procedure is authorized or prescribed by the division, and all subsequent strings of casing must be securely anchored.

3. In areas where the pressures and formations to be encountered during drilling are known, sufficient surface casing shall be run to:

3.1. Reach a depth below all known or reasonably estimated, utilizable, domestic, fresh water levels.

3.2. Prevent blowouts or uncontrolled flows.

4. The casing program adopted must be planned to protect any potential oil or gas horizons penetrated during drilling from infiltration of waters from other sources and to prevent the migration of oil, gas, or water from one horizon to another.

2.2. The operator shall comply with R649-3-9, Protection of Upper Productive Strata.

1. No well shall be deepened for the purpose of producing oil or gas from a lower stratum until all upper productive strata are protected, either permanently by casing and cementing or temporarily through the use of tubing and packer, to the satisfaction of the division.

2. In any well that appears to have defective, poorly cemented, or corroded casing that will permit or may create underground waste or may contaminate underground or surface fresh water, the operator shall proceed with diligence to use the appropriate method and means to eliminate such hazard of underground waste or contamination of fresh water. If such hazard cannot be eliminated, the well shall be properly plugged and abandoned.

3. Natural gas that is encountered in substantial quantities in any section of a drilled hole above the ultimate

objective shall be shut off with reasonable diligence, either by mudding, casing or other approved method, and shall be confined to its original source to the satisfaction of the division.

2.3. The operator shall comply with R649-3-13, Casing Tests.

1. In order to determine the integrity of the casing string set in the well, the operator shall, unless otherwise requested by the division, perform a pressure test of the casing to the pressures specified under R649-3- 7.4 before drilling out of any casing string, suspending drilling operations, or completing the well.

2.4. The operator shall comply with R649-3-6, Drilling Operations.

1. Drilling operations shall be conducted according to the drilling program submitted on the original APD and as approved by the division. Any change of plans to the original drilling program shall be submitted to the division by using Form 9, Sundry Notices and Reports on Wells and shall receive division approval prior to implementation. A change of plans necessary because of emergency conditions may be implemented without division approval. The operator shall provide the division with verbal notice of the emergency change within 24 hours and written notice within five days.

2. An operator of a drilling well as designated in R649-2-4 shall comply with reporting requirements as follows:

2.1. The spudding in of a well shall be reported to the division within 24 hours. The report should include the well name and number, drilling contractor, rig number and type, spud date and time, the date that continuous drilling will commence, the name of the person reporting the spud, and a contact telephone number.

2.2. The operator shall file Form 6, Entity Action Form with the division within five working days of spudding in a well. The division will assign the well an entity number that will identify the well on the operator's monthly oil and gas production and disposition reports.

2.3. The operator shall notify the division 24 hours in advance of all testing to be performed on the blowout preventer equipment on a well.

2.4. The operator shall submit a monthly status report for each drilling well on Form 9, Sundry Notices and Reports on Wells. The report should include the well depth and a description of the operations conducted on the well during the month. The report shall be submitted no later than the fifth day of the following calendar month until such time as the well is completed and the well completion report is filed.

2.5. The operator shall notify the division 24 hours in advance of all casing tests performed in accordance with R649-3-13.

2.6. The operator shall report to the division all fresh water sand encountered during drilling on Form 7, Report of Water Encountered During Drilling. The report shall be filed with Form 8, Well Completion or Recompletion Report and Log.

2.5. The operator shall comply with R649-3-7, Well Control.

1. When drilling in wildcat territory, the owner or operator shall take all reasonably necessary precautions for keeping the well under control at all times and shall provide, at the time the well is started, proper high pressure fittings and equipment. All pressure control equipment shall be maintained in good working condition at all times.

2. In all proved areas, the use of blowout prevention equipment "BOPE" shall be in accordance with the established and approved practice in the area. All pressure control equipment shall be maintained in good working condition at all times.

3. Upon installation, all ram type BOPE and related equipment, including casing, shall be tested to the lesser of the full manufacturer's working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi/ft of the last casing string depth. Annular type BOPE are to be tested in conformance with the manufacturer's published recommendations. The operator shall maintain records of such testing until the well is completed and will submit copies of such tests to the division if required.

4. In addition to the initial pressure tests, ram and annular type preventers shall be checked for physical operation each trip. All BOPE components, with the exception of an annular type blowout preventer, shall be tested monthly to the lesser of 50% of the manufacturer's rated pressure of the BOPE, the maximum anticipated pressure to be contained at the surface, one psi/ft of the last casing string depth, or 70% of the minimum internal yield pressure of any casing subject to test.

5. If a pressure seal in the assembly is disassembled, a test of that seal shall be conducted prior to the resumption of any drilling operation. A shell test of the affected seal shall be adequate. If the affected seal is integral with the BOP stack, either pipe or blind ram, necessitating a test plug to be set in order to test the seal, the division may grant approval to proceed without testing the seal if necessary for prudent operations.

6. All tests of BOPE shall be noted on the driller's log, IADC report book, or equivalent and shall be available for examination by the director or an authorized agent during routine inspections.

7. BOPE used in possible or probable hydrogen sulfide or sour gas formations shall be suitable for use in such areas.

2.6. The operator shall comply with R649-3-23, Well Workover and Recompletion.

1. Requests for approval of a notice of intention to perform a workover or recompletion shall be filed by an operator with the division on Form 9, Sundry Notices and Reports on Wells, or if the operation includes substantial redrilling, deepening, or plugging back of an existing well, on Form 3, Application for Permit to Drill, Deepen or Plug Back.

2. The division shall review the proposed workover or recompletion for conformance with the Oil and Gas Conservation General Rules and advise the operator of its decision and any necessary conditions of approval.

3. Recompletions shall be conducted in a manner to protect the original completion interval(s) and any other known productive intervals.

4. The same tests and reports are required for any well recompletion as are required following an original well completion.

5. The applicant shall file a subsequent report of workover on Form 9, Sundry Notices and Reports, or a subsequent report of recompletion on Form 8, Well Completion or Recompletion Report and Log, within 30 days after completing the workover or recompletion operations.

3. Management of flowback water and surface protection.

3.1. The operator shall comply with R649-3-15, Pollution and Surface Damage Control.

1. The operator shall take all reasonable precautions to avoid polluting lands, streams, reservoirs, natural drainage ways, and underground water.

1.1. The owner or operator shall carry on all operations and maintain the property at all times in a safe and workmanlike manner having due regard for the preservation and conservation of the property and for the health and safety of employees and people residing in close proximity to those operations.

1.2. At a minimum, the owner or operator shall:

1.2.1. Take reasonable steps to prevent and shall remove accumulations of oil or other materials deemed to be fire hazards from the vicinity of well locations, lease tanks and pits.

1.2.2. Remove from the property or store in an orderly manner, all scrap or other materials not in use.

1.2.3. Provide secure workmanlike storage for chemical containers, barrels, solvents, hydraulic fluid, and other non-exempt materials.

1.2.4. Maintain tanks in a workmanlike manner that will preclude leakage and provide for all applicable safety measures, and construct berms of sufficient height and width to contain the quantity of the largest tank at the storage facility.

1.2.4.1. The use of crude or produced water storage tanks without tops is strictly prohibited except during well testing operations.

1.2.5. Catch leaks and drips, contain spills, and cleanup promptly.

1.2.6. Waste reduction and recycling should be practiced in order to help reduce disposal volumes.

1.2.7. Produced water, tank bottoms and other miscellaneous waste should be disposed of in a manner that is in compliance with these rules and other state, federal, or local regulations or ordinances.

1.2.8. In general, good housekeeping practices should be used.

3.2. The operator shall comply with R649-3-16, Reserve Pits and Other On-site Pits.

1. Small onsite oil field pits including, but not limited to, reserve pits, emergency pits, workover and completion pits, storage pits, pipeline drip pits, and sumps shall be located and constructed in such a manner as to contain fluids and not cause pollution of waters and soils. They shall be located and constructed according to the Division guidelines for onsite pits. See Ranking Criteria for Reserve and Onsite Pit Liner Requirements, on the Oil, Gas and Mining web page.

2. Reserve pit location and construction requirements including liner requirements will be discussed at the predrill site evaluation. Special stipulations concerning the reserve pit will be included as part of the Division's approval to drill.

3. Following drilling and completion of the well the reserve pit shall be closed within one year, unless permission is granted by the Division for a longer period.

4. Pit contents shall meet the Division's Cleanup Levels (guidance document for numeric clean-up levels) or background levels prior to burial.

5. The contents may require treatment to reduce mobility and/or toxicity in order to meet cleanup levels.

6. The alternative to meeting cleanup levels would be transporting of material to an appropriate disposal facility.

3.3. The operator shall comply with R649-9-2, General Waste Management.

1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.

1.1. Before using a commercial disposal facility the operator may contact the Division to verify the status of the facility. The Division regularly updates this information on the Division of Oil, Gas and Mining web site.

1.2. Each site and/or facility used for disposal must be permitted and in good standing with the division.

2. Reduction of the amount of material generated that must be disposed of is the preferred practice.

2.1. Recycling should be used whenever possible and practical.

2.2. In general, good housekeeping practices shall be used.

2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.

3. The method of disposal used shall be compatible with the waste that is the subject of disposal.

3.1. RCRA exempt waste shall not be mixed with nonexempt waste.

4. Every operator shall file an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes.

4.1. If changes are made to the plan during the year, then the operator shall notify the division in writing of this change.

4.2. This plan will include the type and estimated annual volume of wastes that will be or have been generated.

4.3. The disposal facilities private or to be used for disposal,

4.4. The description of any waste reduction or minimization procedures.

4.5. Any onsite disposal/treatment methods or programs to be implemented by the operator.

3.4. The operator shall comply with R649-5-1, Requirements for Injection of Fluids Into Reservoirs.

1. Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, the introduction of gas, water or other substances into a reservoir for the purpose of secondary or other enhanced recovery or for storage and the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the board after notice and hearing.

2. A petition for authority for the injection of gas, liquefied petroleum gas, air, water, or any other medium into any formation for any reason, including but not necessarily limited to the establishment of or the expansion of waterflood projects, enhanced recovery projects, and pressure maintenance projects shall contain:

2.1. The name and address of the operator of the project.

2.2. A plat showing the area involved and identifying all wells, including all proposed injection wells, in the project area and within one-half mile radius of the project area.

2.3. A full description of the particular operation for which approval is requested.

2.4. A description of the pools from which the identified wells are producing or have produced.

2.5. The names, description and depth of the pool or pools to be affected.

2.6. A copy of a log of a representative well completed in the pool.

2.7. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily.

2.8. A list of all operators or owners and surface owners within a one-half mile radius of the proposed project.

2.9. An affidavit certifying that said operators or owners and surface owners within a one-half mile radius have been provided a copy of the petition for injection.

2.10. Any additional information the board may determine is necessary to adequately review the petition.

3. Applications as required by R649-5-2 for injection wells that are located within the project area, may be submitted for board consideration and approval with the request for authorization of the recovery project.

4. Established recovery projects may be expanded and additional wells placed on injection only upon authority from the board after notice and hearing or by administrative approval.

5. If the proposed injection interval can be classified as an USDW, approval of the project is subject to the

requirements of R649-5-4.

3.5. The operator shall comply with R649-5-2, Requirements for Class II Injection Wells Including Water Disposal, Storage and Enhanced Recovery Wells.

1. Injection wells shall be completed, equipped, operated, and maintained in a manner that will prevent pollution and damage to any USDW, or other resources and will confine injected fluids to the interval approved.

2. The application for an injection well shall include a properly completed UIC Form 1 and the following:

2.1. A plat showing the location of the injection well, all abandoned or active wells within a one- half mile radius of the proposed well, and the surface owner and the operator of any lands or producing leases, respectively, within a one-half mile radius of the proposed injection well.

2.2. Copies of electrical or radioactive logs, including gamma ray logs, for the proposed well run prior to the installation of casing and indicating resistivity, spontaneous potential, caliper, and porosity.

2.3. A copy of a cement bond or comparable log run for the proposed injection well after casing was set and cemented.

2.4. Copies of logs already on file with the division should be referenced, but need not be refiled.

2.5. A description of the casing or proposed casing program of the injection well and of the proposed method for testing the casing before use of the well.

2.6. A statement as to the type of fluid to be used for injection, its source and estimated amounts to be injected daily.

2.7. Standard laboratory analyses of:

2.7.1. The fluid to be injected,

2.7.2. The fluid in the formation into which the fluid is being injected, and

2.7.3. The compatibility of the fluids.

2.8. The proposed average and maximum injection pressures.

2.9. Evidence and data to support a finding that the proposed injection well will not initiate fractures through the overlying strata or a confining interval that could enable the injected fluid or formation fluid to enter any fresh water strata.

2.10. Appropriate geological data on the injection interval with confining beds clearly labeled,

2.10.1. Nearby Underground Sources of Drinking Water, including the geologic formation name,

2.10.2. Lithologic descriptions, thicknesses, depths, water quality, and lateral extent;

2.10.3. Information relative to geologic structure near the proposed well that may effect the conveyance and/or storage of the injected fluids.

2.11. A review of the mechanical condition of each well within a one-half mile radius of the proposed injection well to assure that no conduit exists that could enable fluids to migrate up or down the wellbore and enter improper intervals.

2.12. An affidavit certifying that a copy of the application has been provided to all operators, owners, and surface owners within a one-half mile radius of the proposed injection well.

2.13. Any other additional information that the board or division may determine is necessary to adequately review the application.

3. Applications for injection wells that are within a recovery project area will be considered for approval:

3.1. Pursuant to R649-5-1-3.

3.2. Subsequent to board approval of a recovery project pursuant to R649-5-1-1.

4. Approval of an injection well is subject to the requirements of R649-5-4, if the proposed injection interval can be classified as an USDW.

5. In addition to the requirements of this section, the provisions of R649-3-1, R649-3-4, R649-3-24, R649-3-32, and R649-8-1 and R649-10 shall apply to all Class II injection wells.

3.6. The operator shall comply with R649-5-3, Noticing and Approval of Injection Wells.

1. Applications for injection wells submitted pursuant to R649-5-1-3 shall be noticed in conformance with the procedural rules of the board as part of the hearing for the recovery project. Any person desiring to object to approval of such an application for an injection well shall file the objection in conformance with the procedural rules of the board.

2. The receipt of a complete and technically adequate application, other than an application submitted pursuant to R649-5-3-1, shall be considered as a request for agency action by the Division and shall be published in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county where the proposed well is located. A copy of the notice of agency action shall also be sent to all parties including government agencies. The notice of agency action shall contain at least the following information:

2.1. The applicant's name, business address, and telephone number.

2.2. The location of the proposed well.

2.3. A description of proposed operation.

3. If no written objection to the application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of agency action, or an aquifer exemption is not required in accordance with R649-5-4, and a board hearing is not otherwise required, the application may be considered and approved administratively.

4. If a written objection to an application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of application, or if a hearing is required by these rules or deemed advisable by the director, the application shall be set for notice and hearing by the board.

5. The director shall have the authority to grant an exception to the hearing requirements of R649-5- 1.1 for conversion to injection of additional wells that constitute a modification or expansion of an authorized project provided that any such well is necessary to develop or maintain thorough and efficient recovery operations for any authorized project and provided that no objection is received pursuant to R649-5-3-3.

6. The director shall have authority to grant an exception to the hearing requirements of R649-5-1-1 for water disposal wells provided disposal is into a formation or interval that is not currently nor anticipated to be an underground source of drinking water and provided that no objection is received pursuant to R649-5-3-3.

3.7. The operator shall comply with R649-5-4, Aquifer Exemption.

1. The board may, after notice and hearing and subject to the EPA approval, authorize the exemption of certain aquifers from classification as an USDW based upon the following findings:

1.1. The aquifer does not currently serve as a source of drinking water.

1.2. The aquifer cannot now and will not in the future serve as a source of drinking water for any of the following reasons:

1.2.1. The aquifer is mineral, hydrocarbon or geothermal energy producing, or it can be demonstrated by the applicant as part of a permit application for a Class II well operation, to contain minerals or hydrocarbons that,

considering their quantity and location, are expected to be commercially producible.

1.2.2. The aquifer is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical.

1.2.3. The aquifer is contaminated to the extent that it would be economically or technologically impractical to render water from the aquifer fit for human consumption.

1.2.4. The aquifer is located above a Class III well mining area subject to subsidence or catastrophic collapse.

1.3. The total dissolved solids content of the water from the aquifer is more than 3,000 and less than 10,000 mg/l, and the aquifer is not reasonably expected to be used as a source of fresh or potable water.

2. Interested parties desiring to have an aquifer exempted from classification as a USDW, shall submit to the division an application that includes sufficient data to justify the proposal. The division shall consider the application and if appropriate, will advise the applicant to submit a request to the board for an aquifer exemption.

3.8. The operator shall comply with R649-5-5, Testing and Monitoring of Injection Wells.

1. Before operating a new injection well, the casing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 300 psi, whichever is greater.

2. Before operating an existing well newly converted to an injection well, the casing outside the tubing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 1,000 psi, whichever is lesser, provided that each well shall be tested to a minimum pressure of 300 psi.

3. In order to demonstrate continuing mechanical integrity after commencement of injection operations, all injection wells shall be pressure tested or monitored as follows:

3.1. Pressure Test. The casing-tubing annulus above the packer shall be pressure tested not less than once each five years to a pressure equal to the maximum authorized injection pressure or to a pressure of 1,000 psi, whichever is lesser, provided that no test pressure shall be less than 300 psi. A report documenting the test results shall be submitted to the division.

3.2. Monitoring. If approved by the director, and in lieu of the pressure testing requirement, the operator may monitor the pressure of the casing-tubing annulus monthly during actual injection operations and report the results to the division.

3.3. Other test procedures or devices such as tracer surveys, temperature logs or noise logs may be required by the division on a case-by-case basis.

3.4. The operator shall sample and analyze the fluids injected in each disposal well or enhanced recovery project at sufficiently frequent time intervals to yield data representative of fluid characteristics, and no less frequently than every year.

3.5. The operator shall submit a copy of the fluid analysis to the division with the Annual Fluid Injection Report, UIC Form 4.

3.9. The operator shall comply with R649-5-6, Duration of Approval for Injection Wells.

1. Approvals or orders authorizing injection wells shall be valid for the life of the well, unless revoked by the board for just cause, after notice and hearing.

2. An approval may be administratively amended if:

2.1. There is a substantial change of conditions in the injection well operation.

2.2. There are substantial changes to the information originally furnished.

2.3. Information as to the permitted operation indicates that an USDW is no longer being protected.

KEY: oil and gas law

February 26, 2015	**40-6-1 et seq.**
Notice of Continuation August 26, 2016	**40-6-5**
	40-6-20
	40-6-21

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-5. Underground Injection Control of Recovery Operations and Class II Injection Wells.
R649-5-1. Requirements for Injection of Fluids Into Reservoirs.

1. Operations to increase ultimate recovery, such as cycling of gas, the maintenance of pressure, the introduction of gas, water or other substances into a reservoir for the purpose of secondary or other enhanced recovery or for storage and the injection of water into any formation for the purpose of water disposal shall be permitted only by order of the board after notice and hearing.

2. A petition for authority for the injection of gas, liquefied petroleum gas, air, water, or any other medium into any formation for any reason, including but not necessarily limited to the establishment of or the expansion of waterflood projects, enhanced recovery projects, and pressure maintenance projects shall contain:

2.1. The name and address of the operator of the project.

2.2. A plat showing the area involved and identifying all wells, including all proposed injection wells, in the project area and within one-half mile radius of the project area.

2.3. A full description of the particular operation for which approval is requested.

2.4. A description of the pools from which the identified wells are producing or have produced.

2.5. The names, description and depth of the pool or pools to be affected.

2.6. A copy of a log of a representative well completed in the pool.

2.7. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily.

2.8. A list of all operators or owners and surface owners within a one-half mile radius of the proposed project.

2.9. An affidavit certifying that said operators or owners and surface owners within a one-half mile radius have been provided a copy of the petition for injection.

2.10. Any additional information the board may determine is necessary to adequately review the petition.

3. Applications as required by R649-5-2 for injection wells that are located within the project area, may be submitted for board consideration and approval with the request for authorization of the recovery project.

4. Established recovery projects may be expanded and additional wells placed on injection only upon authority from the board after notice and hearing or by administrative approval.

5. If the proposed injection interval can be classified as an USDW, approval of the project is subject to the requirements of R649-5-4.

R649-5-2. Requirements for Class II Injection Wells Including Water Disposal, Storage and Enhanced Recovery Wells.

1. Injection wells shall be completed, equipped, operated, and maintained in a manner that will prevent pollution and damage to any USDW, or other resources and will confine injected fluids to the interval approved.

2. The application for an injection well shall include a properly completed UIC Form 1 and the following:

2.1. A plat showing the location of the injection well, all abandoned or active wells within a one-half mile radius of the proposed well, and the surface owner and the operator of any lands or producing leases, respectively, within a one-half mile radius of the proposed injection well.

2.2. Copies of electrical or radioactive logs, including gamma ray logs, for the proposed well run prior to the installation of casing and indicating resistivity, spontaneous potential, caliper, and porosity.

2.3. A copy of a cement bond or comparable log run for the proposed injection well after casing was set and cemented.

2.4. Copies of logs already on file with the division should be referenced, but need not be refiled.

2.5. A description of the casing or proposed casing program of the injection well and of the proposed method for testing the casing before use of the well.

2.6. A statement as to the type of fluid to be used for injection, its source and estimated amounts to be injected daily.

2.7. Standard laboratory analyses of:

2.7.1. The fluid to be injected,

2.7.2. The fluid in the formation into which the fluid is being injected, and

2.7.3. The compatibility of the fluids.

2.8. The proposed average and maximum injection pressures.

2.9. Evidence and data to support a finding that the proposed injection well will not initiate fractures through the overlying strata or a confining interval that could enable the injected fluid or formation fluid to enter any fresh water strata.

2.10. Appropriate geological data on the injection interval with confining beds clearly labeled,

2.10.1. Nearby Underground Sources of Drinking Water, including the geologic formation name,

2.10.2. Lithologic descriptions, thicknesses, depths, water quality, and lateral extent;

2.10.3. Information relative to geologic structure near the proposed well that may effect the conveyance and/or storage of the injected fluids.

2.11. A review of the mechanical condition of each well within a one-half mile radius of the proposed injection well to assure that no conduit exists that could enable fluids to migrate up or down the wellbore and enter improper intervals.

2.12. An affidavit certifying that a copy of the application has been provided to all operators, owners, and surface owners within a one-half mile radius of the proposed injection well.

2.13. Any other additional information that the board or division may determine is necessary to adequately review the application.

3. Applications for injection wells that are within a recovery project area will be considered for approval:

3.1. Pursuant to R649-5-1-3.

3.2. Subsequent to board approval of a recovery project pursuant to R649-5-1-1.

4. Approval of an injection well is subject to the requirements of R649-5-4, if the proposed injection interval can be classified as an USDW.

5. In addition to the requirements of this section, the provisions of R649-3-1, R649-3-4, R649-3-24, R649-3-32, and R649-8-1 and R649-10 shall apply to all Class II injection wells.

R649-5-3. Noticing and Approval of Injection Wells.

1. Applications for injection wells submitted pursuant to R649-5-1-3 shall be noticed in conformance with the procedural rules of the board as part of the hearing for the recovery project. Any person desiring to object to approval of such an application for an injection well shall file the objection in conformance with the procedural rules of the board.

2. The receipt of a complete and technically adequate application, other than an application submitted pursuant to R649-5-3-1, shall be considered as a request for agency action by the Division and shall be published in a daily

newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county where the proposed well is located. A copy of the notice of agency action shall also be sent to all parties including government agencies. The notice of agency action shall contain at least the following information:

2.1. The applicant's name, business address, and telephone number.

2.2. The location of the proposed well.

2.3. A description of proposed operation.

3. If no written objection to the application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of agency action, or an aquifer exemption is not required in accordance with R649-5-4, and a board hearing is not otherwise required, the application may be considered and approved administratively.

4. If a written objection to an application for administrative approval of an injection well is received by the division within 15 days after publication of the notice of application, or if a hearing is required by these rules or deemed advisable by the director, the application shall be set for notice and hearing by the board.

5. The director shall have the authority to grant an exception to the hearing requirements of R649-5-1.1 for conversion to injection of additional wells that constitute a modification or expansion of an authorized project provided that any such well is necessary to develop or maintain thorough and efficient recovery operations for any authorized project and provided that no objection is received pursuant to R649-5-3-3.

6. The director shall have authority to grant an exception to the hearing requirements of R649-5-1-1 for water disposal wells provided disposal is into a formation or interval that is not currently nor anticipated to be an underground source of drinking water and provided that no objection is received pursuant to R649-5-3-3.

R649-5-4. Aquifer Exemption.

1. The board may, after notice and hearing and subject to the EPA approval, authorize the exemption of certain aquifers from classification as an USDW based upon the following findings:

1.1. The aquifer does not currently serve as a source of drinking water.

1.2. The aquifer cannot now and will not in the future serve as a source of drinking water for any of the following reasons:

1.2.1.The aquifer is mineral, hydrocarbon or geothermal energy producing, or it can be demonstrated by the applicant as part of a permit application for a Class II well operation, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible.

1.2.2. The aquifer is situated at a depth or location that makes recovery of water for drinking water purposes economically or technologically impractical.

1.2.3. The aquifer is contaminated to the extent that it would be economically or technologically impractical to render water from the aquifer fit for human consumption.

1.2.4. The aquifer is located above a Class III well mining area subject to subsidence or catastrophic collapse.

1.3. The total dissolved solids content of the water from the aquifer is more than 3,000 and less than 10,000 mg/l, and the aquifer is not reasonably expected to be used as a source of fresh or potable water.

2. Interested parties desiring to have an aquifer exempted from classification as a USDW, shall submit to the division an application that includes sufficient data to justify the proposal. The division shall consider the application and if appropriate, will advise the applicant to submit a request to the board for an aquifer exemption.

R649-5-5. Testing and Monitoring of Injection Wells.

1. Before operating a new injection well, the casing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 300 psi, whichever is greater.

2. Before operating an existing well newly converted to an injection well, the casing outside the tubing shall be tested to a pressure not less than the maximum authorized injection pressure, or to a pressure of 1,000 psi, whichever is lesser, provided that each well shall be tested to a minimum pressure of 300 psi.

3. In order to demonstrate continuing mechanical integrity after commencement of injection operations, all injection wells shall be pressure tested or monitored as follows:

3.1. Pressure Test. The casing-tubing annulus above the packer shall be pressure tested not less than once each five years to a pressure equal to the maximum authorized injection pressure or to a pressure of 1,000 psi, whichever is lesser, provided that no test pressure shall be less than 300 psi. A report documenting the test results shall be submitted to the division.

3.2. Monitoring. If approved by the director, and in lieu of the pressure testing requirement, the operator may monitor the pressure of the casing-tubing annulus monthly during actual injection operations and report the results to the division.

3.3. Other test procedures or devices such as tracer surveys, temperature logs or noise logs may be required by the division on a case-by-case basis.

3.4. The operator shall sample and analyze the fluids injected in each disposal well or enhanced recovery project at sufficiently frequent time intervals to yield data representative of fluid characteristics, and no less frequently than every year.

3.5. The operator shall submit a copy of the fluid analysis to the division with the Annual Fluid Injection Report, UIC Form 4.

R649-5-6. Duration of Approval for Injection Wells.

1. Approvals or orders authorizing injection wells shall be valid for the life of the well, unless revoked by the board for just cause, after notice and hearing.

2. An approval may be administratively amended if:

2.1. There is a substantial change of conditions in the injection well operation.

2.2. There are substantial changes to the information originally furnished.

2.3. Information as to the permitted operation indicates that an USDW is no longer being protected.

R649-5-7. Unit or Cooperative Development or Operation.

Any person desiring to obtain the benefits of Section 40-6-7(1) insofar as the same relates to any method of unit or cooperative development or operation of a field or pool or a part of either, shall file a Request for Agency Action and a copy of such agreement with the board for approval after notice and hearing.

KEY: oil and gas law
June 2, 1998 40-6-1 et seq.
Notice of Continuation August 26, 2016

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-8. Reporting and Report Forms.
R649-8-1. General Report Forms.

1. The forms listed below, as modified by the Division from time to time shall be used for the purpose indicated in accordance with the instructions and the applicable rule.

Form 1 Application for Permit to Conduct Seismic Exploration R649-8-2

Form 2 Seismic Exploration Completion Report R649-8-3

Form 3 Application for Permit to Drill, Deepen, or Plug Back (APD) R649-8-4

Form 4 Bond R649-8-5

Form 5 Designation of Agent or Operator R649-8-6

Form 6 Entity Action Form R649-8-7

Form 7 Report of Water Encountered During Drilling R649-8-8

Form 8 Well Completion or Recompletion Report and Log R649-8-9

Form 9 Sundry Notices and Reports on Wells R649-8-10

Form 10 Monthly Oil and Gas Production Report R649-8-11

Form 11 Monthly Oil and Gas Disposition Report R649-8-12

Form 12 Report of Transferred Oil R649-8-13

Form 13-A Monthly Summary Report of Gas Processing Plant Operations R649-8-14

Form 13-B Monthly Report of Gas Processing Plant Product Allocations R649-8-15

Form 14 Monthly Report of Waste Crude Oil Treatment Facility Operations R649-8-16

Form 15 Designation of Workover or Recompletion R649-8-17

UIC Form 1 Application for Injection Well R649-8-18

UIC Form 2 Monthly Report of Enhanced Recovery Project R649-8-19

UIC Form 3 Monthly Injection Report R649-8-20

UIC Form 4 Annual Fluid Injection Report R649-8-21

UIC Form 5 Transfer of Authority to Inject R649-8-22

2. Any permitted well which is referenced on a report form, correspondence, or well log should be identified by its assigned API number.

R649-8-2. Form 1, Application for Permit to Conduct Seismic Exploration.

At least seven days prior to commencing any type of seismic exploration operations, an Application for Permit to Conduct Seismic Exploration shall be submitted in duplicate to the division by the seismic contractor in accordance with R649-3-26.

R649-8-3. Form 2, Seismic Exploration Completion Report.

Within 60 days of the completion of each seismic exploration project, a Seismic Exploration Completion Report shall be submitted to the division by the seismic contractor in accordance with R649-3-26.

R649-8-4. Form 3, Application for Permit to Drill, Deepen, or Plug Back (APD).

Prior to the commencement of drilling, deepening, or plugging back any well or the commencement of exploratory drilling such as core holes and stratigraphic test holes, and prior to the commencement of any surface disturbance associated with such activity, the operator shall submit in duplicate an Application for Permit to Drill, Deepen, or Plug Back in accordance with R649-3-4.

R649-8-5. Form 4, Bond.

Except where a bond in satisfactory form has been filed by the operator in accordance with state, federal, or Indian lease requirements and evidence has been furnished to the division that such bond has been approved by the appropriate agency, the division shall require from the operator a good and sufficient bond in accordance with R649-3-1.

R649-8-6. Form 5, Designation of Agent or Operator.

Prior to the commencement of operations, a Designation of Agent or Operator shall be filed with the division in accordance with R649-2-4.

R649-8-7. Form 6, Entity Action Form.

1. For the purpose of accurately establishing the division's computerized oil and gas production accounting system and properly maintaining division of interest data for each well in the system, the operator shall file an Entity Action Form with the division within five working days of any of the following actions:

1.1. Spudding of a well, R649-3-6.

1.2. A change in operations which requires adding or removing a well from a group of wells that have identical division of interests, produce from the same formation, have product sales from a common tank, LACT meter, or gas meter, and have the same operator.

1.3. A change in operations when a service well is converted to a producing oil or gas well.

1.4. A change in operations when a well is recompleted and is capable of producing from another formation, R649-3-23.

1.5. A change in interest which requires adding or removing a well from a participating area of a properly designated unit.

2. Upon receipt of an Entity Action Form, the division will assign an entity number to a new well or change the entity number as needed for an existing well.

2.1. This number identifies the well on the operator's monthly oil and gas production and disposition reports.

2.2. Entity numbers are used by the State Tax Commission and other state government agencies to properly account for all production taxes and the divisions of royalty interest on state leases.

3. This form does not take the place of Form 9, Sundry Notices and Reports on Wells, which is to be used to provide detailed accounts of physical operations on wells.

R649-8-8. Form 7, Report of Water Encountered During Drilling.

The operator shall report to the division all fresh water sands encountered during drilling in accordance with R649-3-6. The report shall be filed with the Well Completion or Recompletion Report and Log, Form 8.

R649-8-9. Form 8, Well Completion or Recompletion Report and Log.

In accordance with R649-3-11, R649-3-21, R649-3-23, and R649-3-24, the operator shall file a Well Completion or Recompletion Report and Log and a copy of the electric and radioactivity logs, if run, within 30 days after completing, recompleting, or plugging a well.

R649-8-10. Form 9, Sundry Notices and Reports on Wells.

1. This report form shall be used to notify the division of the intention to do miscellaneous work on any well for which a specific report form is not provided, and to report the subsequent results of that work.

1.1. A notice of intention to do work on a well located on lands with state, fee or privately owned minerals or to

change plans previously approved shall be submitted in duplicate and must be received and approved by the division before the work is commenced.

1.2. The operator is responsible for receipt of the notice by the division in ample time for proper consideration and action. In cases of emergency the operator may obtain verbal approval to commence work.

1.3. Within five days after receiving verbal approval, the operator shall submit a Sundry Notice describing the work and acknowledging the verbal approval.

2. In addition to the types of work listed on the form, a Sundry Notice is required for the following:

2.1. Monthly status report for each drilling well in accordance with R649-3-6.

2.2. Application for permit to complete a well into more than one pool in accordance with R649-3-22.

2.3. Notice of intent to plug and abandon a well in accordance with R649-3-24.

2.4. Notice of intent to pull casing in accordance with R649-3-24.

2.5. Notice of change of operator. The report form should be submitted by both the previous operator and the new operator.

R649-8-11. Form 10, Monthly Oil and Gas Production Report.

1. The division will provide this report monthly to operators of all oil and gas wells within the state. Each operator shall complete the form to properly account for all oil, gas, and water produced from each well.

2. This report shall be submitted in conjunction with Form 11, Monthly Oil and Gas Disposition Report before the fifteenth day of the second calendar month following the month of production.

R649-8-12. Form 11, Monthly Oil and Gas Disposition Report.

1. All oil and gas well operators shall complete this form monthly to account for all oil and gas dispositions from each entity.

1.1. The report should account for the physical dispositions of all oil and gas produced during the report month from each well or group of wells (entity).

1.2. Only the initial disposition of each product as it leaves the well site or is used at the well site should be reported.

1.3. Residue gas and/or load oil received from another well, plant, or field should not be shown on this report.

2. This report shall be submitted in conjunction with Form 10, Monthly Oil and Gas Production Report and Form 12, Report of Transferred Oil on or before the fifteenth day of the second calendar month following the month of production.

R649-8-13. Form 12, Report of Transferred Oil.

1. This report is to be used only in accounting for oil that is transferred from one entity to another entity or oil that is acquired and used during remedial operations on a well.

This includes situations such as the following:

1.1. Oil that is produced at one entity or is acquired from another company, is then used as load oil at a "second" entity, and is then recovered and sold, or

1.2. Oil that is produced and then transferred to a "second" entity for treatment and sale due to mechanical problems at the producing entity.

2. Load oil that is recovered at the "second" entity and non-load oil that is transferred to the "second" entity should be excluded from all reported production, dispositions, and stocks of the "second" entity on Form 11, Monthly Oil and Gas Disposition Report. This allows the reporting of the "second" entity's true production and sales on Form 11, while the remainder of any sales is accounted for on this form.

2.1. The transported volumes reported on this form plus the transported volume for the "second" entity on Form 11 should equal the total run ticket volume as reported by the trucking or pipeline company serving this entity.

2.2. This report is to be filed as an attachment to Form 11, Monthly Oil and Gas Disposition Report during the month in which recovered load oil or any other transferred oil (non-load oil) is sold from the "second" entity.

R649-8-14. Form 13-A, Monthly Summary Report of Gas Processing Plant Operations.

1. Gas processing plant operators shall complete and submit a monthly report in accordance with R649-6-1, to account for the receipt, processing and disposition of all gas by the plant.

2. The report is due on or before the fifteenth day of the second calendar month following the operations month covered by the report.

R649-8-15. Form 13-B, Monthly Report of Gas Processing Plant Product Allocations.

1. Gas processing plant operators that are required by contractual arrangements to allocate residue gas and extracted liquids to the individual producing wells must complete and submit this form monthly in accordance with R649-6-1.

2. The report is to be filed as an attachment to Form 13-A, Monthly Summary Report of Gas Processing Plant Operations on or before the fifteenth day of the second calendar month following the operations month covered by the report.

R649-8-16. Form 14, Monthly Report of Waste Crude Oil Treatment Facility Operations.

1. Each operator of treatment or reclaiming facilities handling tank bottoms, oil from pits or ponds, or any other waste crude oil, shall complete and submit this report monthly in accordance with R649-6-2 to account for stocks, receipts, and deliveries of processed and unprocessed waste crude oil.

2. The report is due on or before the fifteenth day of the second calendar month following the operations month covered by the report.

R649-8-17. Form 15, Designation of Workover or Recompletion.

1. In accordance with Rule R649-3-23, each operator desiring to claim a tax credit for workover or recompletion work performed must submit this report within 90 days after the workover or recompletion work is completed. Upon determination and notification by the division that the described work qualifies for a tax credit under this rule, the operator may claim the tax credit on reports submitted to the Tax Commission during the third quarter after completion of the work.

2. The following workover and recompletion operations qualify for a tax credit:

2.1. Perforating,

2.2. Stimulation (e.g., acid jobs, frac jobs, solvent treatments, nitrogen cleanouts),

2.3. Sand control,

2.4. Water control or shut-off,

2.5. Wellbore cleanout,

2.6. Casing or liner repair,

2.7. Well deepening,

2.8. Initiation of enhanced recovery (excluding surface equipment and associated costs),

2.9. Change of lift system (excluding surface equipment and associated costs),
2.10. Gas well tubing changes (i.e., down-sizing),
2.11. Thief zone identification and elimination.
3. The following workover and recompletion operations do not qualify for a tax credit:
3.1. Pump changes,
3.2. Rod string fishing and repair/replacement,
3.3. Tubing repair/replacement,
3.4. Surface equipment installation and repair,
3.5. Operations generally classified as routine maintenance or repair.
4. Division approval is conditional subject to audit, and actual final expenses may be disallowed if they are not appropriate workover or recompletion expenses.

R649-8-18. UIC Form 1, Application for Injection Well.

Prior to the commencement of operations for injecting any fluid into a well for the purpose of enhanced recovery, disposal, or storage, the operator shall submit an Application for Injection Well and obtain division approval in accordance with R649-5-2.

R649-8-19. UIC Form 2, Monthly Report of Enhanced Recovery Project.

1. The operator shall submit this report monthly to report the injection pressure, rate, and volume for each enhanced recovery injection well or project.
2. The report is due within 30 days following the end of the month of operations.

R649-8-20. UIC Form 3, Monthly Injection Report.

1. The operator shall submit this report monthly to report the daily injection pressure, rate, and volume for each disposal well and/or storage well.
2. The report is due within 30 days following the end of the month of operations.

R649-8-21. UIC Form 4, Annual Fluid Injection Report.

1. The operator of disposal wells, storage wells, or enhanced recovery projects shall file an annual report with the division using this form.
2. The report is due within 60 days following the end of the year.

R649-8-22. UIC Form 5, Transfer of Authority to Inject.

1. The authority to inject for any injection well shall not be transferred from one operator to another without the approval of the division. The transfer of authority to inject for any injection well from one operator to another shall be submitted to the division on this form prior to the date of the proposed transfer.
2. The division shall, within 30 days after receipt of a properly completed form, return a copy of the form to each operator indicating approval or denial of the transfer of authority to inject. If approved, a copy of the order authorizing injection shall be attached to the form returned to the new operator.

KEY: oil and gas conservation, reporting
June 2, 1998 40-6-1 et seq.
Notice of Continuation August 26, 2016

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-9. Waste Management and Disposal.
R649-9-1. Introduction.

1. Section 40-6-5 UCA authorizes the board to regulate the disposal of produced water and oil-field wastes. It is the intent of the board and division to regulate E and P wastes and facilities for the disposal of these wastes in a manner that protects the environment, limits liability to producers, and minimizes the volume of waste.

2. These rules specify the informational and procedural requirements for waste management and disposal, the permitting of disposal facilities and the cleanup requirements for E and P waste related sites.

3. Design and construction requirements for disposal facilities approved prior to July 1, 2013 shall remain as previously permitted. Design and construction changes to these facilities after July 1, 2013 shall meet the following requirements as determined by the division.

4. These rules are intended for E and P waste disposal facilities excluding Class II injection wells and pits associated with wells.

R649-9-2. General Waste Management.

1. Wastes addressed by these rules are E and P Wastes that are exempt from the RCRA hazardous waste management requirements.

1.1. Before using a commercial disposal facility the operator may contact the division to verify the status of the facility. The division regularly updates this information on the Division of Oil, Gas and Mining web site.

1.2. Each site and/or facility used for disposal must be permitted and in good standing with the division.

1.3. All approved disposal facilities not located at a well site shall be identified with a suitable sign showing facility name, operator, location and emergency number.

1.4. The disposal facility shall be fenced and maintained to deter access by livestock and wildlife and, if determined necessary by the division, equipped with flagging or netting to deter entry by birds and waterfowl.

2. Reduction of the amount of material generated that must be disposed of is the preferred practice.

2.1. Recycling should be used whenever possible and practical.

2.2. In general, good housekeeping practices shall be used.

2.3. Operators shall catch leaks, drips, contain spills, and cleanup promptly.

2.4. Disposal facilities shall be operated in accordance with an approved application and in a manner that does not cause safety or health hazards.

3. The method of disposal used shall be compatible with the waste that is the subject of disposal.

3.1. Whenever possible, injection of E and P waste into approved Class II wells is the division's preference.

3.2. RCRA exempt waste shall not be mixed with nonexempt waste.

4. Every operator shall submit, to the division, an Annual Waste Management Plan by January 15 of each year to account for the proper disposition of produced water and other E and P Wastes. This plan will include:

4.1. The type and estimated annual volume of wastes that will be or have been generated.

4.2. The facilities to be used for disposal.

4.3. The description of any waste reduction or minimization procedures.

4.4. Any onsite disposal/treatment methods or programs to be implemented by the operator.

4.5. If changes are made to the plan during the year, then the operator shall notify the division in writing, within 30 days, of this change.

R649-9-3. Permit and Application Requirements for Disposal Facilities.

1. No waste disposal facility shall operate without a division-issued permit.

2. Applications for new disposal facilities or modifications shall be submitted to the division and shall include the following:

2.1. Previously submitted material may be included by reference provided they are current and readily available to the division.

2.2. Evidence justifying the need for the proposed facility or expansion of an existing facility.

2.3. Names and addresses of all applicants, principal officers and owners with 25 percent or more interest in the facility.

2.4. Materials or products to be applied to the land surface or subsurface shall meet the division's current cleanup levels for contaminated soil and other wastes.

2.5. If leachability and/or toxicity are of concern due to the type or source(s) of wastes, tests will be required and may utilize the Toxicity Characteristic Leaching Procedure (TCLP), Synthetic Precipitation Leaching Procedure (SPLP) or any other test approved by the division.

2.6. A contingency plan designed to minimize any hazards to fresh water, public health and safety, or the environment in the event of an unplanned fire, explosion, or a release of contaminants or oil field waste to the air, soil, surface water or ground water.

2.7. A solid waste stream management plan describing all chemical processes, estimated volumes and chemical profiles used in the treatment of waste and odor, any products generated by these processes, method and schedule for disposal of precipitated solids and complete list of all wastes to be accepted at the facility.

2.8. A topographic map and drawing of the site, on a suitable scale, that identifies all geologic cross sections, side slopes, equipment, secondary containment, test borings, roads, fences, gates, wells and springs, drainage patterns, pipelines, surface area to be disturbed, buildings and chemical storage areas within one mile of the site perimeter and location relative to other site facilities. The drawings shall be of professional quality.

3. Siting requirements for new disposal facilities and modifications.

3.1. The disposal facility shall be located on level, stable ground, and an acceptable distance away from any established or intermittent drainage.

3.2. The disposal facility shall be located a minimum of one mile from residences or occupied buildings not associated with the facility unless a wavier has been signed by the owners of the residences and buildings within one mile.

4. Geologic and hydrological requirements for new disposal facilities or modifications.

4.1. The disposal facility shall not be located in a geologically or hydrologically unsuitable area, such as aquifer recharge areas, protection zones for public drinking water sources, flood plains, drainage bottoms, and areas on or near faults, within 500 feet of a wetland, water-course or lakebed, permeable soil where ground water is less than 50 feet below the lowest elevation at which the operator will place oilfield waste, or within the area overlying a subsurface mine.

4.2. Regional and local geologic information shall include bedrock strike and dip, fracture patterns, slope stability, faulting, folding, rockfall, landslides, subsidence or erosion potential, and surface water features that may affect the design and operation of the facility.

4.3. Geological and hydrological evidence showing that the proposed disposal method will not adversely affect existing water quality or major uses of such waters.

4.3.1. Any intentional discharge of water will require an additional permit from the Division of Water Quality.

4.4. Test borings shall be taken in sufficient quantity and to an adequate depth, not to exceed 50 feet, to define subsurface conditions to assure that the facility will be constructed on a firm stable base.

4.5. Representative analysis of facility surface and subsurface soils submitted to the division shall include TDS, major cations and anions or other analysis determined necessary by the division for establishing background soil concentrations.

4.6. Geologic cross-sections submitted to the division shall include depth to shallow ground water, formation names, and type and name of the shallowest fresh water aquifer beneath the proposed site.

4.7. If determined necessary by the division, applicant shall submit ground water analysis of the aquifer(s) beneath the proposed site.

4.8. If determined necessary by the division, applicant shall submit potentiometric maps of the shallowest aquifer(s).

5. Engineering and design requirements for new disposal facilities and modifications.

5.1. Disposal facilities shall be designed and sealed by a registered engineer and inspected by a registered engineer during construction.

5.1.1. A construction certification shall be submitted, by the engineer, prior to the Division issuing an operation permit for the facility.

5.2. The disposal facility shall be designed appropriately for the intended purpose.

5.3. Facilities shall be designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health and safety, and the environment for the life of the operation.

5.3.1. The disposal facility shall be designed with secondary containment to capture the largest potential release in the event of a catastrophic failure.

5.4. Facilities shall be designed and constructed so as to prevent run-on and run-off of surface water, up to peak discharge from a 25 year, 24 hour storm.

5.5. The facility shall be designed such that disposal can only occur when an attendant is on duty, unless loads can be monitored or otherwise isolated for inspection before disposal or other security measures approved by the division.

R649-9-4. Specific Requirements Applicable to Evaporation Facilities.

1. Evaporation facilities shall be designed, constructed and operated to meet the following specific requirements in addition to R649-9-3, Permit and Application Requirements for Disposal Facilities.

2. Applicant shall submit detailed construction/installation diagrams of ponds, side slopes, liners, pond storage capacity, leak detection systems, dikes or levees, wind fences, piping, enhanced evaporation systems with justification, water treatment systems and tanks.

2.1. Detailed information shall be submitted for all enhanced evaporation systems which demonstrates that unlawful discharge will not occur.

2.2. The facility shall be designed, maintained and operated to separate oil from produced water prior to discharge into a pond.

3. Applicant shall submit detailed construction/installation diagrams of unloading facilities and an explanation of the method for controlling and disposing of any liquid hydrocarbon accumulation on the ponds.

3.1. The unloading facility shall be designed, maintained and operated to adequately process the anticipated maximum daily quantity of produced water.

3.2. The unloading facility shall be designed with a leak detection system if determined necessary by the division.

3.2.1. Applicant shall submit procedures for repair should leakage occur.

4. Applicant shall submit the maximum daily quantity of water to be disposed of and a representative water analysis of such water that includes the concentrations of chlorides and sulfates, pH, total dissolved solids "TDS", and information regarding any other significant constituents if requested by the division.

5. Applicant shall submit climatological data describing the average annual evaporation and precipitation.

6. Ponds shall be designed, maintained and operated to meet the following requirements.

6.1. Ponds shall be designed for 10 acre-feet of water or less, unless otherwise approved by the division.

6.2. Ponds shall have adequate storage capacity to safely contain all produced water even during those periods when evaporation rates are at a minimum.

6.3. Ponds shall be designed to prevent unauthorized surface or subsurface discharge of water.

6.4. Ponds shall be designed to include a 2-foot free-board at all times.

6.5. Pond levees shall be constructed so that the inside grade of the levee is no steeper than 3:1 and the outside grade no steeper than 2:1.

6.5.1. The top of the levee shall be level and of sufficient width to allow for adequate compaction.

6.5.2. Vertical height of the levees shall not exceed 25 percent of the total vertical depth of the pond.

7. Ponds shall be designed with two synthetic liners, an upper primary and lower secondary liner, with a leak detection system between them. Synthetic liners shall be installed according to the manufacturer's instructions.

7.1. The primary liner shall be impervious (a hydraulic conductivity no greater than 1 x 10-9 cm/sec) and constructed with a minimum 60-mil HDPE or equivalent liner approved by the division.

7.2. The secondary liner shall be impervious and constructed with a minimum 40-mil HDPE or equivalent liner approved by the division.

7.3. If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion, contraction and settling movements in the underlying earth, without cracking.

7.4. Materials used in lining ponds shall be impervious and resistant to weather, tears and punctures, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances that might be contained in the produced water.

7.5. Applicant shall submit the type, thickness, strength, and life span of material(s) to be used for lining the pond and the method of installation.

7.6. Applicant shall submit procedures for repair of the liner, should leakage occur.

8. Applicant shall submit detailed construction/installation diagram for the leak detection system.

8.1. The leak detection design shall include, a drainage and collection system placed between the upper and lower liners and sloped so as to facilitate the earliest possible detection of a leak.

8.2. The leak detection design shall include a vertical riser outside the dike allowing direct visual inspection of the sump from the surface.

8.2.1. The sump shall be designed to extend a minimum

of two feet below the inlet line from the pond, allowing visual detection of any fluid and sampling of fluid.

8.2.2. Designed with a removable top for the sump riser that will prevent entry of fluids.

8.3. Designed with leak detection piping capable of withstanding chemical attack from oil field waste, structural loading from stresses and disturbances from overlying oil field waste and cover materials, equipment operation, expansion and/or contraction, and facilitate clean-out maintenance.

9. Evaporation facilities shall be operated to separate oil from produced water prior to discharge into a pond and prevent unauthorized surface discharge of water.

9.1. Hydrocarbon accumulation, other than de minimis quantities, on an evaporation pond is considered a violation and shall be removed within 24 hours.

9.2. Overspray from sprinklers and/or overspray caused by wind, including foam, outside lined areas are considered a violation and shall be corrected immediately.

9.3. Sampling and testing of soils suspected to be contaminated from overspray may be required by the division.

R649-9-5. Specific Requirements Applicable to Landfarms.

1. Landfarms for the bioremediation of oil contaminated soils and materials shall be designed and constructed to meet the following specific requirements in addition to R649-9-3, Permit and Application Requirements for Disposal Facilities.

1.1. Landfarms shall be constructed on native soil with a hydraulic conductivity of no greater than 1 x 10-6 cm/sec.

1.2. With division approval, fresh water may be added as necessary to enhance bioremediation and control dust.

1.3. Application of microbes and nutrients for enhancing bioremediation requires prior division approval.

2. Landfarms shall be operated to meet the following requirements:

2.1. E and P waste accepted by the landfarm shall be sufficiently free of liquid content to pass a 60-mesh liquid paint filter test.

2.2. Pooling of liquids in the landfarm is prohibited. The operator shall remove freestanding liquid within 24 hours.

2.3. Within 72 hours after receipt of E and P waste the operator shall spread and disk the waste in twelve-inch or less lifts.

2.4. Soils shall be disked and turned regularly, a minimum of once a month.

2.5. Conduct treatment and soil monitoring to ensure that prior to adding an additional lift the soil concentrations do not exceed the division's current salinity and hydrocarbon cleanup standards.

2.6. Maintain records of the landfarm remediation activity. The records shall be readily accessible for division review.

R649-9-6. Other Disposal Facility Requirements.

1. Facilities used for the treatment and disposal of E and P wastes other than evaporation ponds and landfarms shall be permitted by the division. This may include activities such as composting, solidifying, other bioremediation, water treatment, and others.

2. Application Requirements for Other Disposal Facilities require the following in addition to R 649-9-3, Permit and Application Requirements for Disposal Facilities:

2.1. A complete description of the proposed facility.

2.2. Processes involved including a complete list of all wastes to be accepted at the facility and products generated.

2.3. Maps and drawings of suitable scale showing all facilities and equipment.

R649-9-7. Noticing of Disposal Facilities.

1. The applicant for a new facility or major modification shall give written notice of the application, by certified mail, return receipt requested, to surface and mineral owners of record within one-half mile of the facility, the county commission of the county where the facility is located, and affected tribal and government agencies.

1.1. The notice shall include information describing the facility's location, basic plan of operations, and the applicant's name and address.

1.2. The applicant shall furnish the division proof of required notices.

1.3. The division may extend the distance requirements for notice if the division determines that the proposed disposal facility has the potential to adversely impact fresh water, public health, safety or the environment at a distance greater than one-half mile.

2. Within 30 days of the submission of an application for a disposal facility, the division shall review the application as to its completeness and adequacy for the intended purpose and shall require such changes that are found necessary to assure compliance with the applicable rules. If the application is in order, the division shall provide for a public notice to be published in a newspaper of general circulation in the county where the facility is to be located.

R649-9-8. Bonding of Disposal Facilities.

1. Disposal facilities, other than injection wells and their associated facilities, shall be bonded according to this rule in order to protect the State and oil and gas producers from unnecessary liabilities and cleanup costs in the future. The objectives are to provide the State with adequate security for site reclamation and post closure cost should a facility owner default.

2. Permits issued after July 1, 2013 for new disposal facilities or modifications and facilities being reviewed for 5-year permit renewals, shall submit site reclamation and post closure cost estimates from a responsible third party contractor for division approval.

2.1. The applicant shall bond in the amount of the approved estimated site reclamation and post closure costs, or $25,000, whichever is greatest.

3. Bonds accepted shall be of the same type as those accepted for wells i.e. surety, collateral, or a combination of the two as described in R649-3-1.

4. The total bond will be held by the division or financial institution until the facility has been closed and inspected by the division in accordance with a division approved closure plan.

5. Bond amounts, for permits approved prior to July 1, 2013 will be calculated as follows, and the per volume or per acre figures may be adjusted periodically to compensate for change in cost to perform the necessary cleanup work:

$14,000 per acre of pit, partial acres will be calculated at the rate of $14,000 per acre; plus

$1.00 per barrel of produced water for one-quarter of the total storage capacity of the facility; plus

$30 per cubic yard of solid or semi-solid waste material stockpiled at the facility.

$10,000 Minimum bond amount.

5.1. Operators of disposal facilities permitted prior to July 1, 2013 shall have until July 1, 2018 (five years) to submit, to the division, a disposal facility site reclamation and post closure bond as required above in R649-9-8.2.

6. All disposal facilities, except injection wells covered by R649-3-1, will be covered by an adequate and acceptable bond before being permitted to accept any E and P waste.

7. Forfeiture of the bond shall be the same as those for wells as described in R649-3-1.16.

R649-9-9. Permit and Renewal Approval, Denial, Revocation, Suspension, Modification or Transfer.

1. Permit and renewal approval.

1.1. Construction approvals issued by the division are valid for one year from approval date. An extension may be granted by the division.

1.2. Operating approvals issued by the division for waste management facilities shall remain in effect for five years from the approval date.

1.3. After division review, permits may be renewed for successive 5-year terms.

1.3.1. Prior to renewal approval, the division shall review the operation, compliance history, bonding and technical requirements for the disposal facility.

1.3.2. The division, after notice to the operator, may require modifications of the disposal facility permit, including modifications necessary to the facility permit terms and conditions consistent with statutes, rules or judicial decisions.

2. An application may be denied if:

2.1. A complete application is not submitted.

2.2. The application does not meet R649-9-3.3 on siting and/or R649-9-3.4 on geologic and hydrologic requirements.

2.3. The proposed disposal facility or modification may be detrimental to fresh water, public health, safety or the environment.

2.4. The applicant is unable to justify good cause for the proposed facility.

2.5. An applicant or owner in the facility has a history of failure to comply with division rules and orders, state or federal environmental laws, or is in current violation of a division or board order requiring corrective action.

3. Revocation, suspension, or modification of a permit.

3.1. The division may revoke, suspend, or impose additional operating conditions or limitations on a disposal facility permit at any time, for good cause, after notice to the operator.

3.2. The division may suspend a waste disposal permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment.

3.3. Suspension of a disposal facility permit may be for a fixed period of time or until the operator remedies the violation or potential violation.

3.4. If the division suspends a disposal facility permit, the disposal facility shall not accept oil field waste during the suspension period.

4. Transfer of a permit.

4.1. The operator shall not transfer a permit without the division's prior written approval.

4.2. A request for transfer of a permit shall identify officers, directors and owners of 25 percent or greater in the transferee.

4.3. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval.

4.4. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the transferee may request, within 10 days of receipt of the notice, a public hearing before the board.

4.5. Until the division approves the transfer and the required assurance is in place, the division shall not release the transferor's financial assurance.

R649-9-10. Construction and Inspection Requirements for Disposal Facilities.

1. Division personnel shall be afforded a reasonable opportunity for inspection of any proposed disposal facility during the construction and operation of the facility.

2. The division shall be notified at least 72 hours prior to the installation of leak detection systems or liners.

3. The division shall be notified after completion of facility construction so that a final inspection can be conducted to verify that the facility has been constructed in accordance with the approved application.

4. Failure to meet the requirements and standards for construction and operation of a disposal facility shall be considered as noncompliance and will result in the imposition of corrective actions and compliance schedules or a cessation of operations order.

R649-9-11. Reporting and Recordkeeping for Disposal Facilities.

1. All unauthorized discharges or spills from disposal facilities including water observed in a leak detection system shall be reported, within 24 hours, to the division.

2. Each producer who utilizes any approved produced water disposal facility shall comply with the reporting requirements of R649-8-11.

3. Each operator of a disposal facility, excluding disposal wells, shall report to the division on a quarterly basis.

3.1. This report shall include the volume and type of wastes received at the facility during the quarter and results of the weekly leak detection system inspections.

3.2. Berms and outside walls shall be inspected quarterly and after a major rainfall or windstorm. Berm erosion or loss of integrity shall be reported to the division and may require immediate action.

4. The occurrence of water in a leak detection system during operation constitutes liner failure and requires immediate action.

4.1. The division has the option of allowing the operator a short period of time to take corrective action.

4.2. Further utilization will be allowed only after liner repairs and an inspection by the division.

5. Each owner/operator of a disposal facility shall keep records showing at a minimum the following: date and time waste was received, origin, volume, type, transporter, and generator of the waste. These records shall be available for inspection by the division for at least six years.

R649-9-12. Closure and Post Closure of Disposal Facilities.

1. A plan for final closure of a disposal facility shall be submitted to the division, for approval, at least 60 days prior to cessation of operations. The closure plan shall include the following:

1.1. Provisions for removal of all equipment, buildings, fences and roads at the site.

1.2. Removal of berms.

1.3. Removal of liquids and solid waste to a division approved facility.

1.4. Disposal method for liners.

1.5. Plans and procedures for sampling and testing soils and ground water at the site.

1.5.1. Soils shall meet division cleanup standards or background levels whichever is less stringent.

1.6. A monitoring plan if required by the division.

1.7. Consideration of post disposal land use and landowner requests when the closure plan is developed.

2. During closure operations, the operator shall maintain the disposal facility to protect fresh water, public health, safety and the environment.

3. Location of the closed disposal facility shall be documented with the county recorder's office.

4. The bond for the disposal facility will be released when the division approved closure plan requirements have been met, as determined by the division.

R649-9-13. Variances from Requirements and Standards.

Requests for approval of a variance from any of the requirements or standards of these rules shall be submitted to the director in writing and provide information as to the circumstances that warrant approval of the requested variance and the proposed alternative means by which the requirements or standards will be satisfied.

KEY: oil and gas law
July 1, 2013 40-6-5(3)
Notice of Continuation August 26, 2016

R698. Public Safety, Administration.
R698-1. Public Petitions for Declaratory Orders.
R698-1-1. Authority.

(1) 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.

(2) In order of importance, procedures governing declaratory orders are:

(a) procedures specified in this rule pursuant to Chapter 4 of Title 63G;

(b) the applicable procedures of Chapter 4 of Title 63G;

(c) applicable procedures of other governing state and federal law; and

(d) the Utah Rules of Civil Procedure.

R698-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-4-103, except and in addition:

(a) "agency" means the pertinent division, bureau or office within the Department of Public Safety;

(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;

(d) "order" is defined in Section 63G-3-102; and

(e) "superior agency" means Commissioner of the Department of Public Safety.

R698-1-3. Petition Form and Filing.

(1) The petition shall be addressed and delivered to the director who shall mark the petition with the date of receipt.

(2) The petition shall:

(a) be clearly designated as a request for an agency declaratory order;

(b) identify the statute, rule or order to be reviewed;

(c) describe in detail the situation or circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous;

(e) include an address and telephone number where the petitioner can be contacted during regular working hours;

(f) declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(g) be signed by the petitioner.

R698-1-4. Reviewability.

(1) The agency shall not review a petition for declaratory orders that is:

(a) not within the jurisdiction or competence of the agency;

(b) trivial, irrelevant or immaterial; or

(c) otherwise excluded by state or federal law.

R698-1-5. Intervention.

A person may file a petition for intervention under Section 63G-4-207 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section R698-1-3.

R698-1-6. Petition Review and Disposition.

(1) The director shall promptly review and consider the petition and may:

(a) meet with the petitioner;

(b) consult with counsel or the Attorney General; or

(c) take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

(2) The director may issue an order pursuant to Subsection 63G-4-503(6).

(3) If the director orders an adjudicative proceeding under Subsection 63G-4-503(6):

(a) the proceeding shall be formal and governed by the procedures of Title 63G, Chapter 4, Administrative Procedures Act, or other applicable law if a petition for intervention has been filed within the limits of Section R698-1-5; or

(b) the proceeding may be designated as formal or informal and follow the appropriate procedures of Title 63G, Chapter 4, Administrative Procedures Act,, agency rules or other applicable law if a petition for intervention has not been filed within the limits of Section R698-1-5.

R698-1-7. Administrative Review.

(1) A petitioner may seek review or reconsideration of a declaratory order by petitioning the director under the procedures of Title 63G, Chapter 4, Part 3, Agency Review, or as otherwise provided by law.

(2) If the presiding officer issuing the declaratory order is the director, the petitioner may seek the review of the superior agency.

(3) The petitioner may appeal a director's review or reconsideration decision to the superior agency unless otherwise provided by law.

(4) If the petitioner receives no response from the superior agency within 20 days of filing a petition for review or reconsideration, the appeal shall be considered denied.

KEY: administrative procedure, enforcement (administrative)
1993 63G-4-503
Notice of Continuation December 16, 2011

R710. Public Safety, Fire Marshal.
R710-1. Concerns Servicing Portable Fire Extinguishers.
R710-1-1. Purpose.

The purpose of this rule is to establish licensing requirements for business concerns servicing portable fire extinguishers and to establish the requirements for certificates of registration of persons servicing portable fire extinguishers, to establish service tag requirements, to outline adjudicative proceedings and to establish a fee schedule.

R710-1-2. Authority.

This rule is authorized by Section 53-7-204.

R710-1-3. Definitions.

(1) "Annual" means a period of one year or 365 calendar days.

(2) "Board" means Utah Fire Prevention Board.

(3) "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

(4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

(6) "Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.

(7) "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

(8) "NFPA" means National Fire Protection Association.

(9) "Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

(10) "USDOT" means the United States Department of Transportation.

R710-1-4. Licensing.

(1) License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

(2) Application.

(a) Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

(b) The application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

(3) Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

(4) Equipment Inspection.

The applicant or licensee shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hour notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of portable fire extinguishers.

(5) Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

(6) Original License and Inspection.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license shall be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

(7) Renewal License and Inspection.

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Renewal dates for licensed concerns will be based upon the expiration date. Licenses are valid for a one year period of time.

(8) Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

(9) Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

(10) Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

(11) SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM in writing, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern.

(12) Type.

(a) Every license shall be identified by type. The type of license issued shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

(b) Licenses shall authorize any one, or any combination of the following types of activities:

(i) Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

(ii) Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders using the water jacket or ultrasonic test methods after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

(iii) Type 3 - Conducting hydrostatic tests of fire extinguisher cylinders using the proof pressure test method after receiving a Retesters Identification Number (RIN) issued

by the United States Department of Transportation (USDOT), or

(iv) Type 4 - Servicing, inspecting, and maintaining all types of extinguishers, excluding hydrostatic testing.

(c) No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

(13) Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

(14) Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

(15) Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

(16) Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

(17) Restrictive Use.

(a) No license shall constitute authorization for any licensee, or any of their employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

(b) No license shall constitute authorization for any licensee, or any of their employees, to enforce any provision, or provisions, of this rule, or the International Fire Code.

(18) Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

(19) Registration Number.

(a) Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

(20) Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

(a) Type 4 license:

(i) Nitrogen tank.

(ii) Nitrogen regulator and hose assembly.

(iii) Minimum of twelve (12) recharge adapters.

(iv) Valve cleaning brush.

(v) Scoop.

(vi) Funnel for A:B:C.

(vii) Funnel for B:C.

(viii) A closed receptacle for dry chemical.

(ix) Fifty pound scale.

(x) A scale for cartridges.

(xi) 'O' Ring lubricant.

(xii) Tag hole Punch.

(xiii) Approved seals maximum 14 pound break strength.

(xiv) A copy of NFPA Standard 10 2010 Edition, statute, and these rules.

(xv) Minimum parts:

(A) A supply of O rings needed for standard service.

(B) A supply of valve stems for standard service.

(C) A supply of nozzles and hoses for standard extinguishers.

(D) Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

(E) Carry handles and replacement handles for extinguishers.

(F) Rivets or steel roll pins for handles and levers.

(G) Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

(H) Inspection light for cylinders.

(J) A variety of pull pins to secure handle.

(K) Carbon Dioxide continuity tester for hoses.

(L) Halon closed recovery system.

(b) Type 3 License:

(i) Approved testing pump with a current calibration certificate for the attached gauges.

(ii) Test cage or suitable safety barrier.

(iii) Approved hydro test labels.

(iv) Hydrostatic test adapters or approved equal.

(v) Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

(c) Type 2 License:

Current registration number from the United States Department of Transportation (USDOT), verifying the concern as a qualified cylinder requalification facility under the provisions of the Code of Federal Regulations, 49 CFR, Section 173.34, shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM. All equipment required to perform the functions allowed as a qualified cylinder requalification facility, shall be maintained in good working order and available for inspection by the SFM.

(d) Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

(21) Records.

Accurate records shall be maintained for five (5) years by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-5. Certificates of Registration.

(1) Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

(2) Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

(3) Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

(4) Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. Picture identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule and requirements:

(a) On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

(b) Examinations may be given at various field locations, or on line, as deemed necessary by the SFM. Appointments for field examinations are required.

(c) All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones, I-Pads, tablets, etc. are prohibited in the examination room unless specifically approved by the SFM.

(d) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

(e) Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(f) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

(5) Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

(6) Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance. The holder of an invalid certificate of registration shall not perform any work on portable fire extinguishers.

(7) Renewal Date.

Application for renewal shall be made as directed by the SFM. The failure to renew will cause the certificate of registration to become invalid. Renewal dates for certification of registration will be based upon the concern license renewal date and be valid for one year. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

(8) Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.4 of these rules as follows:

(a) The re-examination to comply with the provisions of Section 4.4 of these rules shall consist of one open book examination, to be administered by the SFM at least 60 days before the renewal date.

(b) The re-examination will consist of questions that focus on changes in the last five years to NFPA 10, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

(c) The certificate holder is responsible to complete the re-examination in sufficient time to renew.

(d) The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(9) Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

(10) Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

(11) Type.

(a) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

(12) Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

(13) Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

(14) Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

(15) Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

(16) Right to Contest.

(a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

(c) The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

(17) Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

(18) New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

(19) Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-6. Seal of Registration.

(1) Description.

The official seal of registration of the SFM shall consist of the following:

(a) The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

(i) The top portion of the outer ring shall have the wording "Utah State".

(ii) The Bottom portion of the outer ring shall have the wording "Fire Marshal".

(b) Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

(c) Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

(2) Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

(3) Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

(4) Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

(5) Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-7. Service Tags.

(1) Size and Color.

Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width.

(2) Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

(3) Tag Information.

(a) Service tags shall bear the following information:

(i) Provisions of Section 6.7.

(ii) Type of license.

(iii) Approved Seal of Registration of the SFM.

(iv) License registration "E" number.

(v) Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

(vi) Signature of individual whose certificate of registration number appears on the tag.

(vii) Concern's name.

(viii) Concern's address.

(ix) Type of service performed.

(x) Type of extinguisher serviced.

(xi) Date service is performed.

(b) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

(4) Legibility.

(a) The certificate of registration number required in Section 7.3(5), and the signature required in Section 7.3(6), shall be printed or written distinctly.

(b) All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

(5) Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five years.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

(6) New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

(7) Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

(8) Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. At that time the expired tag, label or collar shall be removed and a new tag, label or collar shall replace the expired one. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

(9) Restrictive Use.

(a) Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

(b) Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

(c) Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

(d) Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-8. Portable Fire Extinguisher Rated Classification Labels.

(1) Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

(2) Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-9. Amendments and Additions.

(1) Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

(2) Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules.

Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

(3) Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

(4) New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

(5) Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.

R710-1-10. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) The person or applicant provides material misrepresentation or false statement on the application.

(c) The person or applicant refuses to allow inspection by the SFM, or his duly authorized deputies.

(d) The person or applicant for a license or certificate of registration does not have the proper facilities and equipment to conduct the operations for which application is made.

(e) The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination and/or practical tests pursuant to Section 4.15 of these rules.

(f) The person or applicant fails to place a verification of service collar when required on the valve assembly of any fire extinguisher when the following occurs:

(i) re-charge;

(ii) required maintenance.

(g) The person or applicant refuses to take the examination required by Section 5.3 and Section 4.14 of these rules.

(h) The person or applicant has been convicted of one or more federal, state or local laws.

(j) The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

(k) Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

(l) There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing portable fire extinguishers.

(3) A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

(5) The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

(6) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

(7) Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

(8) After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

(9) Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710-1-11. Fees.

(1) Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

(2) Late Renewal Fees.

(a) Any license or certificate of registration not renewed before the license or certificate of registration expiration date will be subject to an additional fee equal to 10% of the fee.

(b) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers
August 15, 2016 **53-7-204**
Notice of Continuation May 15, 2012

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. Purpose.

The purpose of this rule is to establish the minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

R710-3-2. Authority.

This rule is authorized by Section 53- 7- 204.

R710-3-3. Definitions.

(1) Ambulatory means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to Ambulatory may be approved under the conditions stated in Subsections R710-3-4(2)(h), R710-3-4(3)(f), or R710-3-4(4)(j).

(2) Assisted Living Facility means:

(a) a Type 1 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person;

(b) a Type 2 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent; or

(c) a Residential Treatment/Support Assisted Living Facility, which creates a group living environment for four or more residents contracted by the Division of Services to People with Disabilities and subject to licensure by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

(d) Assisted Living Facilities shall be classified by size as follows:

(i) Type 1, 2, and Residential Treatment/Support Limited Capacity Facility means an assisted living facility accommodating five or less residents, excluding staff.

(ii) Type 1, 2, and Residential Treatment/Support Small Facility means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

(iii) Type 1, 2, and Residential Treatment/Support Large Facility means an assisted living facility accommodating more than sixteen residents, excluding staff.

(3) Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

(4) Board means Utah Fire Prevention Board.

(5) Compromised Ambulatory Capacity means physical or mental incapacitations that inhibit a persons ability to exit a facility unassisted.

(6) IBC means International Building Code.

(7) ICC means International Code Council, Inc.

(8) IFC means International Fire Code.

(9) Licensing Authority means the Utah Department of Health or the Utah Department of Human Services.

(10) Semi-independent means a person who is:

(a) physically disabled but able to direct his or her own care; or

(b) cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

(11) SFM means State Fire Marshal.

R710-3-4. Amendments and Additions.

(1) General Requirements

(a) All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

(b) All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

(c) An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

(2) Type I Assisted Living Facilities

(a) Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

(b) Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(c) Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

(d) In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue opening as required in IFC, Chapter 10, Section 1030.

(e) In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

(f) Type I Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(g) Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(h) In a Type I Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

(3) Type II Assisted Living Facilities

(a) Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(b) Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

(c) Type II Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

(d) Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

(i) Type II Small Assisted Living Facilities licensed before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

(e) Type II Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2,

and maintained in accordance with the IBC and IFC.

(i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

(f) In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

(4) Residential Treatment/Support Assisted Living Facilities

(a) Residential Treatment/Support Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

(b) Residential Treatment/Support Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(c) Residents in Residential Treatment/Support Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

(d) In Residential Treatment/Support Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue windows as required in IFC, Chapter 10, Section 1029.

(e) In Residential Treatment/Support Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

(f) Residential Treatment/Support Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

(i) IFC, Chapter 9, Section 903.2.8 is amended to add the following: Exception: Residential Treatment/Support Assisted Living Facility classified as Group R-4, not more than 4500 gross square feet, and not containing more than 16 ambulatory, non-restrained residents, is allowed provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring.

(g) Residential Treatment/Support Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

(h) Residential Treatment/Support Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

(i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

(j) In a Residential Treatment/Support Assisted Living Facility, residents with compromised ambulatory capacity that can demonstrate the ability to exit the facility unassisted in two minutes or less, and meet the requirements listed in Utah Administrative Code, R501-2-11, Emergency Plans, may receive approval from the Office of Licensing, Utah Department of Human Services, to remain in the facility as a resident.

(i) In those facilities where the Office of Licensing, Department of Human Services, determines that the resident cannot exit the facility unassisted in two minutes or less, the facility management shall complete one of the following:

(A) make accommodations, changes or enact an emergency plan that guarantees the exiting of the resident in two minutes or less;

(B) provide a staff to resident ratio of one to one on a 24 hour basis;

(C) install an approved automatic fire sprinkler system; or

(D) move the resident from the facility.

R710-3-5. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-6. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-7. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-8. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

(2) A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

(3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

(4) The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(5) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

(6) Reconsideration of the Boards decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

(7) Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: assisted living facilities
August 15, 2016 **53-7-204**
Notice of Continuation May 23, 2012

R710. Public Safety, Fire Marshal.
R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
R710-4-1. Purpose.

The Purpose of this rule is to establish minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where 50 or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

R710-4-2. Authority.

This rule is authorized by Section 53-7- 204.

R710-4-3. Adoption.

The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the similar reference in the state adopted building code.

R710-4-4. Definitions.

(1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

(2) "Board" means Utah Fire Prevention Board.

(3) "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

(4) "Fire Chief or Chief of the Department" means the AHJ.

(5) "Fire Department" means the AHJ.

(6) "Fire Marshal" means the AHJ.

(7) "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

(8) "IBC" means International Building Code.

(9) "ICC" means International Code Council, Inc.

(10) "IFC" means International Fire Code.

(11) "IFGC" means International Fuel Gas Code.

(12) "IMC" means International Mechanical Code.

(13) "IPC" means International Plumbing Code.

(14) "LSC" means Life Safety Code.

(15) "NEC" means National Electric Code.

(16) "NFPA" means National Fire Protection Association.

(17) "SFM" means State Fire Marshal.

R710-4-5. Amendments and Additions.

(1) Water Supply Analysis

(a) For proposed construction in both sprinklered and nonsprinklered occupancies, the architect or engineer shall provide a water supply analysis as required in NFPA, Standard 13, Chapter 22.

(b) The architect or engineer shall provide the water supply analysis during the preliminary design phase of the proposed construction. The AHJ shall not approve the plan review without the water supply analysis being provided or previously submitted water supply information within the last 12 months that is approved by the AHJ.

(c) The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, 23.2.1.1 and A23.2.1.1.

(2) Fire Alarm Systems

(a) Required Installations

(i) All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

(A) Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 17.7.

(B) Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

(C) Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

(b) Main Panel

(i) An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

(ii) The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

(c) System Wiring Class

(i) Fire alarm system wiring shall be designated and installed as follows:

(A) The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

(B) The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

(C) Signaling line circuits shall be designated and installed Class A loop as defined in NFPA, Standard 72.

(d) Fan Shut Down

(A) Fan shut down shall be as required in IMC, Chapter 6, Section 606.

(B) Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

(3) Time Out and Seclusion Rooms

(a) Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

(b) A vision panel shall be provided in the room door for observation purposes.

(c) Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases

automatically if not physically held in the locked position by an individual on the outside of the door.

(d) Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

R710-4-6. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-7. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-8. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-9. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

(2) A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

(3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

(4) The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(5) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

(6) Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

(7) Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, public buildings
August 15, 2016 **53-7-204**
Notice of Continuation May 24, 2012

R710. Public Safety, Fire Marshal.
R710-5. Automatic Fire Sprinkler System Inspecting and Testing.
R710-5-1. Purpose.

The purpose of this rule is to establish the minimum rules to provide regulation to those who inspect and test Automatic Fire Sprinkler Systems.

R710-5-2. Authority.

This rule is authorized by Section 53-7-204.

R710-5-3. Definitions.

(1) "Annual" means a period of one year or 365 calendar days.

(2) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

(3) "Board" means Utah Fire Prevention Board.

(4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(5) "NFPA" means National Fire Protection Association.

(6) "NICET" means National Institute for Certification in Engineering Technologies.

(7) "SFM" means State Fire Marshal or authorized deputy.

R710-5-4. Certificates of Registration.

(1) No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM as required in Section 53-7-225.5.

(2) The following groups are exempted from the requirements of this part:

(a) the AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules; or

(b) the building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section R710-5-7(2), to satisfy requirements set by company policy, insurance, or risk management.

(3) Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM and signed by the applicant.

(a) The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

(b) The applicant shall indicate on the application which of the four technician levels the applicant will apply for:

(i) Technician I;

(ii) Technician II

(iii) Technician III; or

(iv) Master Technician.

(c) The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern.

(i) A public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage shall issue the public liability insurance.

(ii) The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is no longer in effect for any reason.

(4) The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

(a) Technician I shall:

(i) pass a written examination on wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes; and

(ii) complete the manipulative skills task book;

(b) Technician II shall:

(i) pass all the requirements listed for Technician I;

(ii) pass a written examination on dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps, and water storage tanks; and

(iii) complete the manipulative skills task book;

(c) Technician III shall:

(i) pass all the requirements listed for Technician I and II;

(ii) pass a written examination on water spray fixed systems, foam-water sprinkler systems, and foam-water spray systems; and

(iii) complete the manipulative skills task book; and

(d) Master Technician shall:

(i) have successfully completed and be certified as NICET III in Inspection and Testing of Water-based Systems; and

(ii) complete the manipulative skills task book.

(5) Examinations will be given according to the following requirements:

(a) all certification examinations given are open book examinations, the applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room;

(b) completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination;

(c) each certification examination taken has a time limit of two hours to completion;

(d) to successfully pass the written examination, the applicant must obtain a minimum grade of 70%;

(e) leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant;

(f) if there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered; and

(g) to successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

(6) As required in Subsection R710-5-4(4)(d), those applicants that have successfully completed the requirements of NICET III, in Inspection and Testing of Water-based Systems, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial written examination waived, after appropriate documentation is provided to the SFM by the applicant.

(7) Following receipt of the properly completed application and successful completion of required testing, the SFM shall issue a certificate of registration.

(8) Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

(9) Application for renewal shall be made as directed by the SFM.

(10) Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section R710-5-4 as follows:

(a) the re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date;

(b) the re-examination will consist of questions that

focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the board or the SFM;

(c) the certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew; and

(d) the certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(11) The SFM may refuse to renew any certificate of registration pursuant to R710-5-8(2). The applicant shall, upon such refusal, have the same rights as are granted by Section R710-5-8.

(12) The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

(13) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified as follows:

(a) Technician I: A person who is engaged in the inspection and testing of wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes;

(b) Technician II: A person who is engaged in the inspection and testing of dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps and water storage tanks;

(c) Technician III: A person who is engaged in the inspection and testing of foam-water sprinkler systems, foam-water spray systems, and water spray fixed systems; and

(d) Master Technician: A person who has obtained NICET III certification in Inspection and Testing of Water-based Systems.

(14) Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

(15) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

(16) No certificate of registration shall be issued to any person who is under 18 years of age.

(17) Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

(b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

(18) Right to Contest.

(a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

(c) The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

(19) Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

(20) Every certificate shall be identified by a number, delineated as AFS-(number). Such number shall not be transferred from one person to another.

(21) New or existing employees desiring to attain a Certificate of Registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 60 days from the initial date of employment or beginning service in the field.

R710-5-5. Service Tags.

(1) Size and Color.

(a) Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width.

(b) Tags may be produced in any color except red or a variation of red.

(c) A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of automatic fire sprinkler systems as required in NFPA, Standard 25, and the requirements of these rules.

(i) After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

(2) The service tag shall be attached at the sprinkler riser for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the riser in such a position as to be conveniently inspected by the AHJ.

(3) Service tags shall bear the following information:

(a) provisions of Section 4.7;

(b) approved Seal of Registration of the SFM;

(c) certificate of registration "AFS" number of individual who performed or supervised the service or services performed;

(d) signature of individual whose certificate of registration number appears on the tag;

(e) concern's name;

(f) concern's address;

(g) type of service performed;

(h) type of system serviced; and

(i) date service is performed.

(4) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

(5) Legibility.

(a) The certificate of registration number required in Section R710-5-5(3)(c), and the signature required in Section R710-5-5(3)(d), shall be printed or written distinctly.

(b) All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

(6) A sample service tag is on file in the State Fire Marshal's Office for review.

(7) A new service tag shall be attached to a system each time a service is performed.

(8) The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

(9) Removal.

(a) No person or persons shall remove a service tag except when further service is performed.

(b) No person shall deface, modify, or alter any service tag that is required to be attached to the system.

(c) A red tag can only be removed by written authority from the AHJ.

(10) Service tags may be printed for any number of years not to exceed eight years.

R710-5-6. Seal of Registration.

(1) The official seal of registration of the SFM shall consist of the following:

(a) the image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal";

(i) the top portion of the outer ring shall have the wording "Utah State";

(ii) the bottom portion of the outer ring shall have the wording "Fire Marshal"; and

(b) appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

(2) No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

(3) Certificate holders or concerns shall use the Seal of Registration on every service tag.

(4) No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

(5) Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-5-7. Amendments and Additions.

(1) At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

(2) NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line 16 of the "Inspection" section, the "Obstruction Reference" is changed from 14.2.2 to 14.2.1.

(3) NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line one of the "Investigation" section, the "Obstruction Reference" is changed from 14.2.1 to 14.2.2.

(4) Frequency and Labels.

(a) Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

(b) Automatic fire sprinkler systems that pass the three-year and five-year inspection requirements as required in NFPA 25, Tables 5.1 and 13.1, shall have a label affixed to the riser indicating the specific inspection or inspections that was completed, the month and year those inspections was performed, the person who performed the inspection, and the person performing the inspections certificate of registration number.

(c) The label shall be affixed to the riser using a heatless process, shall be 3 in. X 5 in., shall have the official seal of registration of the SFM affixed to the label, shall be constructed of durable material, and shall be the self-destructive type when removal is attempted.

(5) Accepted Inspection Forms.

(a) Inspection forms listed in NFPA 25, Annex B, Section B.2, shall be used as the accepted inspection forms.

(b) Inspection form format shall be as required in NFPA 25, Annex B, Section B.1(4).

(c) A similar equivalent inspection form approved by the SFM may be used as the accepted forms for inspection, testing, and maintenance of water-based fire protection systems.

(d) A copy of the completed inspection forms shall be left in a water proof container affixed to the riser.

(6) Newly installed automatic fire sprinkler systems, standpipes, and fire pumps are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

R710-5-8. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

(a) the applicant or person is not the real person in interest;

(b) the applicant or person provides material misrepresentation or false statements on the application;

(c) the applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies;

(d) the applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made;

(e) the applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination pursuant to Section 3.3 of these rules;

(f) the applicant or person refuses to take the examination required by Section 3.3 of these rules;

(g) the applicant or person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules;

(h) the applicant or person has been convicted of one or more federal, state or local laws;

(i) the applicant or person has been convicted of a violation of the adopted rules or been found by a board administrative proceeding to have violated the adopted rules;

(j) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration; or

(k) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire sprinkler system equipment.

(3) A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The board shall be the final authority on the suspension or revocation of a certificate of registration.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the board. After the hearing,

the board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

R710-5-9. Fees.

(1) The required fee shall accompany the application for certificate of registration.

(a) Certificate of registration fees will be refunded if the application is denied.

(2) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: automatic fire sprinklers
August 23, 2016 53-7-204
Notice of Continuation March 25, 2013

R710. Public Safety, Fire Marshal.
R710-8. Day Care Rules.
R710-8-1. Purpose.

The purpose of this rule is to establish minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

R710-8-2. Authority.

This rule is authorized by Section 53-7-204.

R710-8-3. Definitions.

(1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

(2) "Board" means Utah Fire Prevention Board.

(3) "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

(4) "Day Care Facility" means any building or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

(5) "Day Care Center" means providing care for five or more clients in a place other than the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

(6) "Family Day Care" means providing care for clients listed in the following two groups:

(a) Type 1 - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care; and

(b) Type 2 - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

(7) "ICC" means International Code Council, Inc.

(8) "IFC" means International Fire Code.

(9) "NFPA" means National Fire Protection Association.

(10) "SFM" means State Fire Marshal.

R710-8-4. Additions.

(1) Places of religious worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.

(2) Family day care.

(a) Family day care units shall have on each floor occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.

(b) Family day care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.

(i) Type 1 family day care units, located on the ground level or in a basement, may use an emergency escape or rescue openings as allowed in IFC, Chapter 10, Section 1030.

(c) Family day care units shall not be located above the second story.

(d) In family day care units, clients under the age of two shall not be located above or below the first story.

(i) Clients under the age of two may be housed above or below the first story where there is at least one exit that leads directly to the outside and complies with IFC, Section 1011 or Section 1012 or Section 1027.

(e) Family day care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.

(f) Family day care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10, Standard for Portable Fire Extinguishers.

(g) Family day care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.

(h) Rooms in family day care units that are provided for clients to sleep or nap, shall have at least one opening or door approved for emergency escape.

(i) Fire drills shall be conducted in family day care units quarterly and shall include the complete evacuation from the building of all clients and staff.

(i) At least annually, in type I family day care units, the fire drill shall include the actual evacuation using the escape or rescue opening, if one is used as a substitute for one of the required means of egress.

(3) Day care centers.

(a) Day care centers shall comply with either I-4 requirements or E requirements of the IBC, whichever is applicable for the type of day care center.

(b) Emergency evacuation drills shall be completed as required in IFC, Chapter 4, Section 405.

(4) Requirements for all day care.

(a) Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.

(b) A fire escape plan shall be completed and posted in a conspicuous place.

(i) All staff shall be trained on the fire escape plan and procedure.

(c) The AHJ shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

(i) For day care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

R710-8-5. Repeal of Conflicting Board Actions.

All former board actions, or parts thereof, conflicting or inconsistent with the provisions of this board action or of the codes hereby adopted, are hereby repealed.

R710-8-6. Validity.

The board hereby declares that should any section, paragraph, sentence, or word of this board action, or of the codes hereby adopted, be declared invalid, it is the intent of the board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-7. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ.

R710-8-8. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) A person may request a hearing on a decision made by the AHJ by filing an appeal to the board within 20 days

after receiving the final decision from the AHJ.

(3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(4) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(5) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(6) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(7) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

KEY: fire prevention, day care
August 23, 2016 53-7-204
Notice of Continuation March 13, 2012

R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.
R710-9-1. Purpose.

The purpose of this rule is to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, procedures for the issuance of blasting permits, and amendments and additions.

R710-9-2. Authority.

This rule is authorized by Section 53-7-204.

R710-9-3. Definitions.

(1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

(2) "Board" means Utah Fire Prevention Board.

(3) "Committee" means the Firefighter Support Restricted Account Advisory Committee.

(4) "Division" means State Fire Marshal.

(5) "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

(6) "IFC" means International Fire Code.

(7) "LFA" means Local Fire Authority.

(8) "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.

(9) "Restricted Account" means Firefighter Support Restricted Account.

(10) "SFM" means State Fire Marshal or authorized deputy.

(11) "Subcommittee" means Fire Prevention Board Budget Subcommittee or Amendment Subcommittee.

R710-9-4. Conduct of Board Members and Board Meetings.

(1) Board meetings shall be presided over and conducted by the chair and in the chair's absence, by the vice chair or the chair's designee.

(2) A quorum shall be required to approve any action of the board.

(3) The chair of the board and board members shall be entitled to vote on all issues considered by the board. A board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

(4) Meetings of the board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 14 days before the regularly scheduled board meetings.

(5) Public notice of board meetings shall be made by the division as prescribed in Section 52-4-6.

(6) The division shall provide the board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the board to fulfill its responsibility. The minutes of board meetings shall be completed and sent to board members at least 14 days prior to the scheduled board meeting.

(7) A board member's standing on the board shall come under review after two unexcused absences in one year from regularly scheduled board meetings.

(a) The board member's name shall be submitted to the governor's office for status review.

R710-9-5. Deputizing Persons to Act as Special Deputy State Fire Marshals.

(1) Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

(2) Pursuant to Section 53-7-101, special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

(3) Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

(4) Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

(5) Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-6. Procedures to Amend the International Fire Code.

(1) All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the board at the next regularly scheduled board meeting.

(2) Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the board may be delayed in presentation until the next regularly scheduled board meeting.

(3) Upon presentation of a proposed amendment, the board shall do one of the following:

(a) accept the proposed amendment as submitted or as modified by the board;

(b) reject the proposed amendment;

(c) submit the proposed amendment to the Board Amendment Subcommittee for further study; or

(d) return the proposed amendment to the requesting person or agency, accompanied by board comments, allowing the requesting person or agency to resubmit the proposed amendment with modifications.

(4) The Board Amendment Subcommittee shall report its recommendation to the board at the next regularly scheduled board meeting.

(5) The board shall make a final decision on the proposed amendment at the next board meeting following the original submission.

(6) The board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

(7) When approved by the board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

(8) The division shall maintain a list of amendments to the IFC that have been granted by the board.

(9) The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of Section 63-2-203.

R710-9-7. Fire Advisory and Code Analysis Committee.

(1) There is created by the board a Fire Advisory and

Code Analysis Committee whose duties are to provide direction to the board in the matters of fire prevention and building codes.

(2) The committee shall serve in an advisory position to the board, members shall be appointed by the board, shall serve for a term of three years, and shall consist of the following members:

(a) a representative from the State Fire Marshal's Office;

(b) the Code Committee Chairman of the Fire Marshal's Association of Utah;

(c) a fire marshal or fire inspector from a local fire department or fire district;

(d) a representative from the Department of Health;

(e) the Chief Elevator Inspector from the Utah Labor Commission;

(f) a representative from the Department of Human Services; and

(g) a representative from Forestry, Fire and State Lands.

(3) This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

(4) The Council shall meet as directed by the board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(5) The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(6) The chair or vice chair of the council shall report to the board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-8. Enforcement of the Rules of the State Fire Marshal.

(1) Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

(2) Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

(3) Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

(4) The following listed occupancies shall be inspected by the LFA, the SFM, or his authorized deputies:

(a) publicly owned buildings other than state owned buildings;

(b) public and private schools;

(c) privately owned colleges and universities;

(d) institutional occupancies; and

(e) places of assembly.

(5) The board shall require prior to approval of a grant the following:

(a) that the applying fire agency be actively participating in the statewide fire statistics reporting program; and

(b) that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-9. Fire Prevention Board Budget and Amendment Subcommittees.

(1) There are created two Fire Prevention Board subcommittees known as the Budget Subcommittee, and the Amendment Subcommittee. Each subcommittee's membership shall be appointed from members of the board.

(2) Subcommittee membership shall be by appointment of the board chair or as volunteered by board members. Subcommittee membership shall be limited to four board members.

(3) Each subcommittee shall meet as necessary and shall vote and appoint a chair to represent the subcommittee at regularly scheduled board meetings.

R710-9-10. Firefighter Support Restricted Account.

(1) There is created by the board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the division in the distribution of funds in the restricted account.

(2) The Committee shall be appointed by the division, approved by the board, and shall consist of the following members:

(a) two representatives from the Utah State Firemen's Association;

(b) two representatives from the Utah State Fire Chiefs Association;

(c) two representatives from the Professional Firefighters of Utah; and

(d) one representative from the general public.

(3) The committee members shall serve for a term of three years, shall meet as directed by the division, and a majority of members shall be present to constitute a quorum.

(4) The committee shall select one of its members to act in the position of chair. The chair shall serve for a term of one year, and shall be a voting member only in the event of a tie vote.

(5) The committee shall assist the division in preparing application forms to be used to apply for distributions from the restricted account.

(6) The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the restricted account funds.

(7) The division shall distribute the restricted account funding to charitable organizations meeting the requirements listed in Subsection 53-7-109(4), and to be expended for only the purposes allowed in accordance with Subsection 53-7-109(5)(b).

(8) In the event of a conflict in the distribution of the restricted account funds, an appeal for resolution shall be made to the board. The board shall be the final authority in the resolution of the conflict.

R710-9-11. Regulation of Novelty Lighters.

All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy and Novelty Lighter Initiative, Toy-like Lighters Disavowed List, http://publicsafety.utah.gov/firemarshal, shall not be sold or offered for sale in the State of Utah.

R710-9-12. Amendments and Additions.

There are currently no amendments and additions adopted by the Board for application statewide.

R710-9-13. Repeal of Conflicting Board Actions.

All former board actions, or parts thereof, conflicting or inconsistent with the provisions of this board action or of the

codes hereby adopted, are hereby repealed.

R710-9-14. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-15. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the board to act as the board of appeals.

(3) A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the board within 20 days after receiving final decision.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

KEY: fire prevention, law
August 23, 2016 53-7-204
Notice of Continuation June 7, 2012

R710. Public Safety, Fire Marshal.
R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.
R710-10-1. Purpose.

The purpose of this rule is to provide minimum rules for fire service training, education and certification by establishing a Fire Service Education Administrator, a Fire Education Program Coordinator, the Fire Service Standards and Training Council, the Fire Service Certification Council, the Utah Fire and Rescue Academy, and standards for those agencies conducting non-affiliated fire service training.

R710-10-2. Authority.

This rule is authorized by Section 53-7-204.

R710-10-3. Definitions.

(1) "Academy" means Utah Fire and Rescue Academy.

(2) "Academy Director" means the Director of the Utah Fire and Rescue Academy.

(3) "Administrator" means Fire Service Education Administrator.

(4) "Board" means Utah Fire Prevention Board.

(5) "Career Firefighter" means one whose primary employment is directly related to the fire service.

(6) "Certification Council" means the Fire Service Certification Council.

(7) "Certification System" means the Utah Fire Service Certification System.

(8) "Coordinator" means Fire Service Education Program Coordinator.

(9) "EMT" means Emergency Medical Technician.

(10) "Non-Affiliated" means an individual who is not a member of an organized fire department.

(11) "Plan" means Fire Academy Strategic Plan.

(12) "RCA" means Recruit Candidate Academy

(13) "SFM" means State Fire Marshal or authorized deputy.

(14) "Standards Council" means Fire Service Standards and Training Council.

(15) "Volunteer/Part-Paid Firefighter" means one whose primary employment is not directly related to the fire service.

R710-10-4. Fire Service Education Administrator.

(1) There is created by the Board a Fire Service Education Administrator for the State of Utah. This administrator shall be the State Fire Marshal.

(2) The administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

(a) The administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

(3) The administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

(4) The administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

(5) The administrator shall as directed by the board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

(6) The administrator shall oversee the Fire Department Assistance Grant program by completing the following:

(a) ensure that a broad based selection committee is impaneled each year;

(b) compile for presentation to the board the proposed grants; and

(c) receive the board's approval before issuing the grants.

(7) The administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, ensure completion of agreements and contracts, and ensure that payments on agreements and contracts are completed expeditiously.

(8) The administrator shall report to the board at each regularly scheduled board meeting the current status of fire service education statewide.

(a) The administrator shall present any proposed changes in fire service education to the board, and receive direction and approval from the board, before making those changes.

R710-10-5. Fire Service Education Program Coordinator.

(1) The Fire Service Education Program Coordinator shall assist the administrator in statewide fire service education.

(2) The coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

(3) The coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The coordinator shall work with the academy director to update the Strategic Plan and keep it current to the needs of the fire service.

(4) The coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the administrator.

(5) The coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

(6) The coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the council chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the board is kept informed of the Training Council's decisions.

R710-10-6. Fire Service Standards and Training Council.

(1) There is created by the board, the Fire Service Standards and Training Council, whose duties are to provide direction to the board and academy in matters relating to fire service standards, training, and certification.

(2) The Standards Council shall serve in an advisory position to the board, members shall be appointed by the board, shall serve four year terms, and shall consist of the following members:

(a) representative from the Utah State Fire Chiefs Association;

(b) representative from the Utah State Firemen's Association;

(c) representative from the Fire Marshal's Association of Utah;

(d) specialist in hazardous materials representing the State Fire Marshals Office;

(e) fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators;

(f) specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands;

(g) representative from the International Association of Firefighters;

(h) representative from the Utah Fire Service Certification Council;

(i) representative from the Utah Fire and Life Safety Education Association; and

(j) representative from the Utah Fire Training Officers Association.

(3) The Standards Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business.

(a) A majority of the Standards Council members shall be present to constitute a quorum.

(4) The Standards Council shall select one of its members to act in the position of chair, and another member to act as vice chair.

(a) The chair and vice chair shall serve one year terms on a calendar year basis.

(b) Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(c) If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

(5) If a Standards Council member has two or more unexcused absences during a 12 month period, from regularly scheduled Standards Council meetings, it is considered grounds for dismissal pending review by the board.

(a) The coordinator shall submit the name of the Standards Council member to the board for status review.

(6) A member of the Standards Council may have a representative of their respective organization sit in proxy of that member, if submitted and approved by the coordinator prior to the meeting.

(7) The chair or vice chair of the Standards Council shall report to the board the activities of the Standards Council at regularly scheduled board meetings. The coordinator may report to the board the activities of the Standards Council in the absence of the chair or vice chair.

(8) The Standards Council shall consider all subjects presented to them, subjects assigned to them by the board, and shall report their recommendations to the board at regularly scheduled board meetings.

(9) One-half of the members of the Standards Council shall be reappointed or replaced by the board every two years.

R710-10-7. Utah Fire Service Certification Council.

(1) There is created by the board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

(2) The Certification Council shall be made up of 12 members, appointed by the academy director, approved by the board, and each member shall serve three year terms.

(3) The Certification Council shall be made up of users of the certification system and be comprised of both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

(4) The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

(5) Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

(6) A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

R710-10-8. Utah Fire and Rescue Academy.

(1) The primary fire service training school shall be known as the Utah Fire and Rescue Academy.

(2) The director of the Utah Fire and Rescue Academy shall report to the administrator the activities of the academy with regard to completion of the agreed academy contract.

(3) The academy director may recommend to the administrator or coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the academy.

(4) The academy shall receive approval from the administrator, after being presented to the Standards and Training Council, any substantial changes in academy training programs that vary from the agreed contract.

(5) The academy director shall provide to the coordinator by October 1st of each year, a numerical summary of those career, volunteer/part-paid, and non-affiliated students attending the academy in the following categories:

(a) Those who have received certification during the previous contract period at each certification level.

(b) Those who have received an academic degree in any Fire Science category in the previous contract period.

(c) Those who have completed other academy classes during the previous contract period.

(6) The academy director shall provide to the coordinator by October 1st of each year, a numerical comparison of the categories required in Subsection R710-10-8(5), comparing attendance in the previous contract period.

(7) The academy director shall provide to the coordinator by October 1st of each year, in accepted budgeting practices, the following:

(a) A cost analysis of classes to include the total spent for each class title, the average cost per class, the number of classes delivered, the number of participants per class title, and the cost per participant for each class title provided by the academy.

(b) A budget summary comparing amounts budgeted to actual expenditures for each budget code funded by the contract.

(8) The academy director shall provide to the coordinator by October 1st of each year, a numerical summary of those students attending academy courses in the following categories:

(a) Non-affiliated personnel enrolled in college courses.

(b) Career fire service personnel enrolled in college credit courses.

(c) Volunteer and part-paid fire service personnel enrolled in college credit courses.

(d) Non-affiliated personnel enrolled in non-credit continuing education courses.

(e) Career fire service personnel enrolled in non-credit continuing education courses.

(f) Volunteer and part-paid fire service personnel enrolled in non-credit continuing education courses.

(9) The academy director shall present to the coordinator by January of each year, proposals to be incorporated in the academy contract for the next fiscal year.

R710-10-9. Non-Affiliated Fire Service Training.

(1) Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive accreditation in writing from the Standards Council and the academy director.

(2) Before accreditation is granted, the training organization requesting approval shall demonstrate the following:

(a) Complete a written application requesting approval

to conduct the training course.

(b) Designate an approved course coordinator to oversee the course delivery and ensure the course meets each of the applicable objectives.

(c) Ensure that qualified instructors are used to teach each subject.

(d) Ensure sufficient student to instructor ratios for all subjects or skills to be taught to include those designated high hazard.

(e) Demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught.

(f) Maintain course documentation as required through the Certification System to ensure that all elements of the necessary training is completed.

(g) Follow the accepted requirements of the Certification System for requesting testing and certification.

(3) As required in Subsection R710-10-9(2)(b), the designated course coordinator shall meet the following requirements:

(a) Be currently certified at the certification level as established by the Standards Council.

(b) Ensure that all assigned instructors meet the requirements as required in Subsection R710-10-9(4).

(c) Ensure that the course syllabus and practical skills guide meet the requirements of the Certification System.

(d) Ensure that the requirements of Subsections R710-10-9(2)(d), (e), (f) and (g) are met.

(4) As required in Subsection R710-10-9(2)(c), qualified instructors shall meet the following requirements:

(a) Must be currently certified at the certification level as established by the Standards Council.

(b) If the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.

(5) An Introduction to Emergency Services class shall be completed by the non-affiliated student wishing to receive an RCA within the time period stated in Subsection R710-10-9(7). The Introduction to Emergency Services class may be waived if the applicant can demonstrate to the academy sufficient competency or prior experience in the fire service to make the class unwarranted.

(6) Non-affiliated training providers shall follow the curriculum outline that is taught at the academy in the RCA program in order to award students an RCA Certificate of Completion. Any changes to the curriculum of the RCA program at the academy shall be provided by the academy to the non-affiliated training providers to maintain consistency in the RCA program.

(7) An RCA Certificate of Completion may be issued to the non-affiliated student by the academy upon successful completion of the following within a 24 month period:

(a) Introduction to Emergency Services class or accepted waiver.

(b) EMT Basic Course.

(c) Completion of an accredited RCA.

(8) Non-affiliated training providers that have received accreditation shall be reaccredited every five years from the date of initial accreditation.

R710-10-10. Repeal of Conflicting Board Actions.

All former board actions, or parts thereof, conflicting or inconsistent with the provisions of this board action or of the codes hereby adopted, are hereby repealed.

R710-10-11. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-10-12. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by Sections 63G-4-202 and 63G-4-203.

(2) A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the board within 20 days after receiving final decision.

(3) All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with Section 63G-4-201.

(4) The board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

(5) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(6) Reconsideration of the board's decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(7) Judicial review of all final board actions resulting from informal adjudicative proceedings is available pursuant to Section 63G-4-402.

KEY: fire training
August 23, 2016 **53-7-204**
Notice of Continuation October 5, 2015

R710. Public Safety, Fire Marshal.
R710-11. Fire Alarm System Inspecting and Testing.
R710-11-1. Purpose.

The purpose of this rule is to establish minimum rules to provide regulation to those who inspect and test fire alarm systems.

R710-11-2. Authority.

This rule is authorized by Section 53-7-204.

R710-11-3. Definitions.

(1) "Annual" means a period of one year or 365 calendar days.

(2) "Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, the local fire enforcement authority, and building officials.

(3) "Board" means Utah Fire Prevention Board.

(4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(5) "Inspecting and Testing" means work completed to ensure that the system operates properly as required by applicable statute, codes and standards.

(6) "IFC" means International Fire Code.

(7) "NFPA" means National Fire Protection Association.

(8) "NICET" means National Institute for Certification in Engineering Technologies.

(9) "SFM" means State Fire Marshal or authorized deputy.

(10) "Service" means inspecting and testing of fire alarm systems.

R710-11-4. Certificates of Registration.

(1) No person shall engage in the inspecting and testing of fire alarm systems without first receiving a certificate of registration issued by the SFM.

(2) The following groups are exempted from the requirements of this part:

(a) the AHJ that is performing the initial installation acceptance testing of the fire alarm system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules; and

(ii) the building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section R710-11-7(2), to satisfy requirements set by company policy, insurance, or risk management.

(3) Application for a certificate of registration to inspect and test fire alarm systems shall be made in writing to the SFM on forms provided by the SFM and signed by the applicant.

(a) The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

(b) The applicant shall indicate on the application which of the three technician levels the applicant will apply for:

(i) Basic Fire Alarm Technician;

(ii) Fire Alarm Technician; or

(iii) Master Fire Alarm Technician.

(c) The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern.

(i) A public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage shall issue the public liability insurance.

(ii) The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is no longer in effect for any reason.

(4) The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

(a) Basic Fire Alarm Technician shall:

(i) pass a written examination on basic testing of fire alarm systems or shall be certified as a NICET I; and

(ii) complete the manipulative skills task book.

(iii) Work as a Basic Fire Alarm Technician shall be performed under direct supervision of a Fire Alarm Technician or Master Fire Alarm Technician.

(b) Fire Alarm Technician shall:

(i) pass all the requirements listed for Basic Fire Alarm Technician; and

(ii) pass a written examination on basic testing and maintenance of fire alarm systems limited up to and including four story buildings or shall be certified as a NICET II.

(c) Master Fire Alarm Technician shall;

(i) pass all the requirements listed for Basic Fire Alarm Technician and Fire Alarm Technician; and

(ii) pass a written examination on fire alarm systems in buildings over four stories, voice alarm/evacuation systems, and smoke control systems or shall be certified as a NICET III or as NICET IV.

(5) Examinations.

(a) All certification examinations given are open book examinations;

(i) The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination; and

(ii) Any other materials to include cellular telephones are prohibited in the examination room.

(b) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

(c) Each certification examination taken has a time limit of two hours to completion.

(i) To successfully pass the written examination, the applicant must obtain a minimum grade of 70%.

(ii) Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

(d) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

(e) To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

(6) Those applicants that have successfully completed the requirements outlined in Section R710-11-5, and are certified by NICET in the skills that correspond to the work to be performed by the applicant, shall have the requirement for written examination waived after appropriate documentation is provided to the SFM by the applicant.

(7) Following receipt of the properly completed application and successful completion of required testing, the SFM shall issue a certificate of registration.

(8) Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

(9) Application for renewal shall be made as directed by the SFM.

(10) Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate.

(a) The re-examination shall consist of an examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

(b) The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules.

The re-examination may also consist of questions that focus on practices of concern as noted by the board or the SFM.

(c) The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

(d) The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

(11) The SFM may refuse to renew any certificate of registration pursuant to R710-11-8(2).

(a) The applicant shall, upon such refusal, have the same rights as are granted by Section R710-11-8.

(12) The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

(13) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(14) Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

(15) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

(16) No certificate of registration shall be issued to any person who is under 18 years of age.

(17) Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

(b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

(18) Right to Contest.

(a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

(b) Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

(c) The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

(19) Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

(20) Every certificate shall be identified by a number. The certificate of registration shall be worn in a visible manner when inspecting and testing fire alarm systems.

(21) New or existing employees desiring to attain a certificate of registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 90 days from the initial date of employment or beginning service in the field.

R710-11-5. Service Tags.

(1) Size and Color.

(a) Tags shall be not more than five and one-half inches in height, nor less than four and one-half inches in height, and not more than three inches in width, nor less than two and one-half inches in width.

(b) Tags may be produced in any color except red or a variation of red.

(c) A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of fire alarm systems as required in NFPA, Standard 72, and the requirements of these rules.

(i) After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

(d) If the AHJ reviews the noted deficiencies on the attached red tag and finds the deficiencies are not consistent with the requirements in NFPA, Standard 72, the red tag shall be removed by the certified person that attached the red tag.

(2) The service tag shall be attached at the fire alarm control panel for each system inspected or at other locations as needed to show compliance.

(a) The service tag shall be attached to the control panel in such a position as to be conveniently inspected by the AHJ.

(3) Service tags shall bear the following information:

(a) provisions of Section 4.7;

(b) approved Seal of Registration of the SFM;

(c) certificate of registration number of individual who performed or supervised the service or services performed;

(d) signature of individual whose certificate of registration number appears on the tag;

(e) concern's name;

(f) concern's address;

(g) type of service performed;

(h) type of system serviced; and

(i) date service is performed.

(b) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

(4) Legibility.

(a) The certificate of registration number required in Section R710-11-5(3)(c), and the signature required in Section R710-11-5(3)(d), shall be printed or written distinctly.

(b) All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

(5) An sample service tag is on file in the State Fire Marshal's Office for review.

(6) A new service tag shall be attached to a system each time a service is performed.

(7) The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL".

(8) Removal.

(a) No person or persons shall remove a service tag except when further service is performed.

(b) No person shall deface, modify, or alter any service tag that is required to be attached to the system.

(c) A red tag can only be removed by written authority from the AHJ. Verbal authority to initially remove the tag is allowed as long as it is followed by written authority.

(9) Service tags may be printed for any number of years not to exceed eight years.

R710-11-6. Seal of Registration.

(1) The official seal of registration of the SFM shall consist of the following:

(a) the image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal";

(i) the top portion of the outer ring shall have the wording "Utah State"; and

(ii) the bottom portion of the outer ring shall have the wording "Fire Marshal".

(b) Appending below the bottom portion and in a

centered position, shall be a box provided for the displaying of the certification number assigned to the person.

(2) No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

(3) Certificate holders or concerns shall use the Seal of Registration on every service tag.

(4) No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

(5) Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-11-7. Amendments and Additions.

(1) At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

(2) Fire alarm systems shall be inspected annually by a person holding the appropriate certificate of registration as required in Section R710-11-4(1).

(3) Newly installed fire alarm systems are exempt from the annual testing requirement required in Section R710-11-7(2), for one year from the approval date of the initial installation acceptance testing.

R710-11-8. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.

(2) The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

(a) the applicant or person is not the real person of interest;

(b) the applicant or person provides material misrepresentation or false statements on the application;

(c) the applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies;

(d) the applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made;

(e) the applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination or manipulative skills pursuant to Section R710-11-4(3) of these rules;

(f) the applicant or person refuses to take the examination required by Section R710-11-4(3) of these rules;

(g) the applicant or person fails to pay the certification of registration, examination or other required fees as required in Section R710-11-9;

(h) the applicant or person has been convicted of violating one or more federal, state or local laws;

(j) the applicant or person has been convicted of a violation of the adopted rules or been found by a board administrative proceeding to have violated the adopted rules;

(k) any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration; or

(l) there are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire alarm system equipment.

(3) A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the board if requested by that person within 20 days after receiving notice.

(4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with Section 63G-4-201.

(5) The board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The board shall be the final authority on the suspension or revocation of a certificate of registration.

(6) The board shall direct the SFM to issue a signed order to the parties involved giving the decision of the board within a reasonable time of the hearing pursuant to Section 63G-4-203.

(7) Reconsideration of the board decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(8) After a period of three years from the date of revocation, the board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the board shall convene to review the revoked person's application, and that person shall be allowed to present themselves and their case before the board. After the hearing, the board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

(9) Judicial review of all final board actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

R710-11-9. Fees.

(1) The required fee shall accompany the application for certificate of registration.

(a) Certificate of registration fees will be refunded if the application is denied.

(2) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: fire alarm systems
August 23, 2016 **53-7-204**
Notice of Continuation October 11, 2011

R710. Public Safety, Fire Marshal.
R710-12. Hazardous Materials Training and Certification.
R710-12-1. Purpose.

The purpose of this rule is to establish minimum rules establishing ongoing training standards for hazardous materials emergency response agencies. The Board also adopts minimum rules for certification for persons who provide hazardous materials emergency response services.

R710-12-2. Authority.

This rule is authorized by Section 53-7-204.

R710-12-3. Adoption.

There is adopted as part of these rules the National Fire Protection Association (NFPA), Standard 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition, except as amended by provisions as outlined in this rule.

R710-12-4. Definitions.

(1) "AHJ" means Authority Having Jurisdiction.

(2) "Board" means Utah Fire Prevention Board.

(3) "Certificate" means a written document issued by the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification System, to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

(4) "Council" means Hazardous Materials Advisory Council.

(5) "Emergency response agencies" means those agencies that are created and under the control of local, state or federal government or regional inter-governmental agencies to provide emergency response for hazardous materials.

(6) "Hazardous Material" means a substance that can be solid, liquid or gas, that when released is capable of creating harm to people, the environment and property and includes weapons of mass destruction as well as illicit labs, environmental crimes, and industrial sabotage.

(7) "Emergency Response Services" means providing or coordinating on-site protective or offensive actions to reduce the risk of harm to people, the environment and property during the initial, time-critical phase of a hazardous materials/WMD incident.

(8) "Institute of Emergency Services and Homeland Security" means a college entity of Utah Valley University of that same name.

(9) "NFPA" means National Fire Protection Association.

(10) "SFM" means State Fire Marshal or authorized deputy.

(11) "Utah Fire Service Certification System" means the system approved by the Board to provide certification to those emergency personnel certifying in hazardous materials.

R710-12-5. Hazardous Materials Advisory Council.

(1) There is created by the board, the Hazardous Materials Advisory Council, whose duties are to provide direction to the board in matters relating to training and certification standards for hazardous materials emergency responders and emergency response agencies.

(2) The council's members shall be appointed by the board, shall serve four year terms, and shall consist of the following members:

(a) a representative from the career fire service;

(b) a representative from the volunteer fire service;

(c) a representative from the Department of Environmental Quality;

(d) a representative from the Department of Transportation;

(e) a representative from law enforcement;

(f) a representative from the Fire and Rescue Academy;

(g) a representative from the State Fire Marshal office;

(h) a representative from the National Guard;

(j) a representative from a Local Emergency Planning Committee; and

(k) a representative from private industry.

(3) The council shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

(4) The council shall select one of its members to act in the position of chair, and another member to act as vice chair.

(a) The chair and vice chair shall serve one year terms on a calendar year basis.

(b) Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of each calendar year.

(c) If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

(5) If a council member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the board. The Coordinator shall submit the name of the member to the board for status review.

(6) A member of the council that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another council member vote by proxy, if submitted and approved by the coordinator prior to the meeting.

(7) The chair or vice chair of the council shall report to the board the activities of the council at regularly scheduled board meetings. The coordinator may report to the board the activities of the council in the absence of the chair or vice chair.

(8) The council shall consider all subjects presented to them, subjects assigned to them by the board, and shall report their recommendations to the board at regularly scheduled board meetings.

(9) One-half of the members of the council shall be reappointed or replaced by the board every two years.

R710-12-6. Training.

(1) Instruction materials designed for statewide use that will teach minimum core competencies for those persons certifying to provide response services regarding hazardous material emergencies shall be approved by the council and accepted by the Utah Fire Service Certification Council. (2) Written examinations, practical or actual demonstrations, and any other required testing given for core competency, for those persons certifying to provide response services regarding hazardous material emergencies statewide, shall be approved by the council and accepted by the Utah Fire Service Certification Council.

R710-12-7. Certificates.

(1) No person shall provide hazardous materials services as a member of an emergency response agency without first receiving a certification issued by the Utah Fire Service Certification Council.

(2) To be certified in hazardous material response, a request for certification shall be made in writing to the Utah Fire Service Certification System.

(a) The applicant shall indicate which of the five certification levels the applicant will apply for:

(i) Awareness Level;

(ii) Operations Level Responder;

(iii) Hazardous Materials Technician;

(iv) Hazardous Materials Officer; or

(v) Hazardous Materials Incident Commander.

(3) Examination.

(a) An applicant certifying at the Awareness Level shall be trained to meet all the competencies in Chapter 4 of NFPA 472 and pass a written examination with a minimum score of 70%.

(b) An applicant certifying as an Operations Level Responder shall meet all the requirements listed in Section R710-12-7(3)(a), and shall be trained to meet all the competencies in Chapter 5 of NFPA 472, and pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(c) An applicant certifying as a Hazardous Materials Technician shall pass all the requirements listed in Sections R710-12-7(3)(a) and R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 7 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(d) An applicant certifying as a Hazardous Materials Officer shall meet all the requirements listed in Sections R710-12-7(3)(a) through R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 10 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(e) An applicant certifying as a Hazardous Materials Incident Commander shall meet all the requirements listed in Sections R710-12-7(3)(a) through R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 8 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

(4) Following receipt of the properly completed application and compliance with Section R710-12-7(3), the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification Council shall issue a certificate.

(5) Original certificates shall be valid for three years from the date of certification issuance. Thereafter, each certificate of registration shall be renewed every three years from issuance, unless otherwise specified by a Utah certification standard.

(6) Renewal shall be made as directed by the Utah Fire Service Certification Council.

(7) Every holder of a valid certificate shall provide to the Utah Fire Service Certification Council written verification from the authorizing agency that they have received continuing training in hazardous materials necessary to maintain competency over the previous three-year period of certification issuance.

R710-12-8. Adjudicative Proceedings.

All adjudicative proceedings performed with regard to a certificate issued under Section R710-12-7 shall proceed as outlined in the Utah Fire Service Certification System, Policy and Procedures Manual.

R710-12-9. Fees.

The required fee for certification and recertification shall be paid to the Utah Fire Service Certification System.

KEY: hazardous materials
August 23, 2016 **53-7-204**

Notice of Continuation March 8, 2013

R710. Public Safety, Fire Marshal.
R710-13. Reduced Cigarette Ignition Propensity and Firefighter Protection Act.
R710-13-1. Purpose.

The purpose of this rule is to establish minimum rules for the enactment of the Reduced Cigarette Ignition Propensity and Firefighter Protection Act.

R710-13-2. Authority.

This rule is authorized by Section 53-7-407.

R710-13-3. Definitions.

(1) "AG" means Attorney General
(2) "Board" means Utah Fire Prevention Board.
(3) "NFPA" means National Fire Protection Association.
(4) "SFM" means State Fire Marshal or authorized deputy.
(5) "Tax Commission" means the Utah State Tax Commission.

R710-13-4. Certification and Product Change.

(1) If the SFM intends to remove a brand from the certified list, it will send a notice of intent to deny to the manufacturer. The notice of intent shall include the following:
(a) the factual and legal deficiencies upon with the SFM intended action rests;
(b) the actions the manufacturer must take to satisfy the factual or legal deficiencies upon with the intended action is based; and
(c) the notification that the manufacturer shall have 15 working days to cure the deficiencies and submit documentation or other information to correct the deficiencies. The SFM may extend the time period for a manufacturer to cure the deficiencies.

R710-13-5. Adjudicative Proceedings.

(1) Adjudicative proceedings performed by the agency shall proceed informally as authorized by Sections 63G-4-202 and 63G-4-203.

KEY: fire safe cigarettes
August 23, 2016 53-7-407
Notice of Continuation November 13, 2013

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-910. Non-Reportable Traffic Offenses.
R722-910-1. Purpose.

The purpose of this rule is to establish procedures regarding the collection and dissemination of non-reportable traffic offenses.

R722-910-2. Authority.

This rule is authorized by Subsection 53-10-104(13).

R722-910-3. Definitions.

(1) Terms used in this rule are defined in Section 53-10-102.

(2) In addition:

(a) "traffic offense" has the same meaning as defined in Subsection 77-40-102(11).

R722-910-4. Dissemination of Criminal History Record Information.

(1) The division shall collect and disseminate criminal history record information in accordance with Utah Code Ann. Section 53-10-101 et seq., except when it is information corresponding to a non-reportable traffic offense as defined in Subsection 77-40-102(11).

(2) A law enforcement agency is not required to submit fingerprints as provided in Section 53-10-207 in connection with any offense that meets the definition of a non-reportable traffic offense.

KEY: criminal offenses, fingerprints, non-reportable offenses
December 22, 2015 **53-10-104(13)**
53-10-102
77-40-102(11)

R728. Public Safety, Peace Officer Standards and Training.
R728-401. Training Academy Requirements.
R728-401-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-401-2. Purpose.

The purpose of this rule is to provide procedures regarding the operation of training programs.

R728-401-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Agency-sponsored applicant" means a person seeking admission into a training program who is a full time, paid employee of a governmental entity, and who the division has responsibility to train as defined in Section 53-6-212, "agency-sponsored applicant" does not include a part-time, reserve, or contract employee;

(b) "Satellite academy" means a certified academy or training program administered by a governmental entity or institution of higher education that is established primarily for the training of its employees or self-sponsored applicants;

(c) "Self-sponsored applicant" means a person seeking admission into a training program who is responsible for paying the cost of the training program;

(d) "Training program" means the basic training courses offered by the division or one of the satellite academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher.

R728-401-4. Admission into a Training Program.

(1) All applicants seeking to attend a training program must submit an application packet to the division in accordance with R728-403.

(2) The division shall pay the costs of an agency-sponsored applicant to attend the training program offered at POST.

(a) The agency-sponsored applicant's employer must verify the applicant is a full-time employee of a governmental entity who will be functioning as a peace officer.

(3) Self-sponsored applicants shall be responsible for paying all costs associated with the training program.

(a) Self-sponsored applicants may only attend a training program offered at POST if special circumstances exist and approval has been granted by the director.

R728-401-5. Approval of Satellite Academies.

(1) A law enforcement agency, correctional agency, or institution of higher learning that meets the conditions and requirements set forth below may conduct a basic peace officer training program that is primarily established for the training of self-sponsored applicants, with the approval of the council.

(2) An entity seeking to operate a satellite academy shall submit to the director, a request in writing and include documentation of:

(a) the background and qualifications of the individual who will be the director of the satellite academy; and

(b) the need to operate the satellite academy through evidence that:

(i) there are no satellite academies within a 30 mile radius of the location where the new academy will operate;

(ii) a law enforcement agency in the county or region has requested, in writing, that the entity operate a satellite academy;

(iii) a satellite academy operating within the county, region or within 30 miles of the location of the applying entity has indicated that it is unable to meet the demand for training; or

(iv) the entity will provide a unique or specialized training program that is not currently offered in the county, region, or within 30 miles of the location of the applying entity.

(3) The division, with the approval of the council, may authorize an entity to operate a satellite academy if the entity demonstrates there is a need for additional training programs:

(a) in the county or region where the proposed satellite academy is to operate; or

(b) that cannot reasonably be met by the division.

R728-401-6. Procedures for Course Validation.

(1) Courses taught at training programs shall contain the content and meet the requirements established by the division and approved by the council.

(2) A satellite academy shall provide the division with a class schedule and a list of instructors before training may begin.

(3) A satellite academy shall ensure that all equipment required to perform the training be furnished by the sponsoring agency, self-sponsored applicant, or training facility; and that such equipment meets POST standards.

(4) All instructors must be POST certified instructors, and approved to instruct in their assigned topic.

(a) Instructors teaching academic portions of the curriculum must have completed an instructor development course recognized by the division and received POST certification as outlined in R728-502-5.

(b) Instructors teaching skill portions of the curriculum must have completed the specialty instructor requirements for the specific skill area being taught and received POST certification as outlined in R728-502-9.

(c) Subject matter experts may be used as guest instructors.

(5) Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives.

(6) The POST approved on-line assessment system shall be utilized to administer all tests and examinations.

(a) Tests and examinations shall be administered as outlined in the approved curriculum.

(b) Program coordinators must proctor all tests and examinations.

(c) The final certification exam shall not be administered until the student has completed all academic requirements of the course.

(d) The final certification examination shall be a comprehensive examination and shall require a minimum score of 80% to pass.

(7) Physical fitness assessment standards are set by the division and approved by the council.

(a) Program coordinators must administer the physical fitness assessment in accordance with POST approved procedures.

(8) Attendance rosters shall be kept to satisfy statutory requirements and copies of these rosters shall be submitted to the division.

(a) A student who has missed more than 16 hours of a basic peace officer course, or four hours of a basic dispatcher course, may not become certifiable until appropriate makeup work has been completed.

(b) If, as determined by the academy staff, a student has missed a significant part of any subject or block of instruction, that student may not be certifiable until appropriate make-up work is completed.

(9) Successful completion of the course and completion of all POST required documentation is necessary before the student may be certifiable.

(a) All documentation must be completed and submitted to the division within 14 calendar days of completion of the course.

(10) The division shall conduct audits and site visits of each satellite academy to ensure compliance with all rules established herein.

KEY: dispatchers, peace officers, satellite academies, training programs

August 23, 2016	**53-6-105**
Notice of Continuation December 13, 2011	**53-6-202**
	53-6-212
	53-6-310

R728. Public Safety, Peace Officer Standards and Training.
R728-403. Procedures for Certification.
R728-403-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-403-2. Purpose.

The purpose of this rule is to provide procedures for a dispatcher or peace officer to become certified or reactivate certification.

R728-403-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Actively Engaged" means a currently certified peace officer as defined in Section 53-13-102 through 53-13-105 who works while on duty as defined in 53-13-101 for a minimum of 60 hours per reporting year and receives annual training as defined in Section 53-6-306(3)(a).

(b) "Applicant" means a person seeking to become certified or reinstate certification as a dispatcher or peace officer;

(c) "Certification examination" means the written test given to an applicant to become certified or to reactivate certification as a dispatcher or peace officer;

(d) "Physical fitness test" means the physical fitness standards adopted by the council on June 4, 2009, which must be met in order to become a peace officer;

(e) "Reporting year" means an annual period starting on July 1, and ending on June 30 of the following year;

(f) "Training program" means the basic training courses offered by the division or one of the certified academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher; and

(g) "Training year" means the same as reporting year.

R728-403-4. Application for Training and Certification.

(1) An applicant seeking to become certified as a dispatcher or peace officer shall submit a completed application packet to the division that includes:

(a) a written or electronic application form provided by the division;

(b) a photocopy of a government-issued identification card;

(c) evidence that the applicant is a United States citizen to include a photocopy of a birth certificate or a photocopy of a United States passport, or, in the case of naturalized citizen, a naturalization number;

(d) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(e) one recent color photograph of passport quality with the applicant's name written on the back of the photograph;

(f) evidence that the applicant has completed high school or obtained the educational equivalent; and

(g) the application fee, unless the applicant has been hired as a dispatcher or peace officer by a governmental entity.

(2) An applicant seeking to become a certified peace officer shall also submit:

(a) proof that the applicant has achieved a passing score on the National Peace Officer Selection Test (NPOST), unless the applicant was certified as a special functions officer prior to 1997 and is applying to become a law enforcement officer or correctional officer; and

(b) a medical evaluation from a medical doctor indicating the applicant is able to participate in all aspects of the training program.

(3) The applicant must submit the application packet four weeks prior to the start of a training program to allow the division adequate time to process the application packet.

(a) The division shall not accept nor process any application that is not complete or fails to include all required attachments.

(4) An application shall be considered valid for one year from the time the application is completed by the applicant.

(5)(a) Once a completed application packet is received by the division, the packet shall be reviewed to determine if the applicant meets the requirements in Sections 53-6-203 or 53-6-302.

(b) If the division does not have sufficient information to make this determination, the division may request the applicant provide additional information.

(6)(a) In determining whether an applicant has demonstrated good moral character as required by Sections 53-6-203 or 53-6-302, the division shall conduct a criminal history background check of local, state, and national criminal history files to determine if the applicant has a criminal record.

(b) An applicant with a criminal history that contains any of the following shall be denied entrance into a training program and shall not receive certification:

(i) a conviction of a felony under state or federal law in this or any other state;

(ii) dismissal from the armed services under dishonorable conditions; or

(iii) a conviction of domestic violence, unless the conviction has been expunged or set aside.

(c) An applicant who has been convicted of, or involved in conduct which is a state or federal criminal offense, may not be allowed to attend a basic training program or receive POST certification for a period of time consistent with the POST Council disciplinary guidelines as approved by the council on June 5, 2013.

(i) The waiting period shall run from the date of the involvement, unless the applicant is still under court supervision (i.e. probation) for the violation, in which case the applicant will not be allowed to make application until the probation has been successfully completed or the applicant is no longer under court supervision.

(ii) Waiting periods shall run consecutively for applicants who have been convicted of or involved in multiple violations.

(d) Any activity involving the abuse of alcohol or drugs may be considered in determining whether an applicant will be allowed to attend a basic training program or receive POST certification.

(e) An applicant convicted of or involved in minor crimes not otherwise identified in this rule, including traffic violations that reflect a willful disregard for lawful behavior as evidenced by repetitiveness of conduct or other aggravating factors, shall not be allowed to attend a basic training program or receive POST certification prior to one year from the latest conviction or involvement.

(i) In cases where arrest warrants are issued, the one-year waiting period will begin at the time the warrant is served on the applicant.

(f) If an applicant is found to have falsified any information to gain admittance into a basic training program, a two-year waiting period shall be applied from the date the division becomes aware of the falsification.

(i) If the information falsified is covered by other

sections of this rule, (i.e., state or federal criminal offense) and a specific waiting period is required, the division shall require the applicant to wait the longer of the two periods. Waiting periods will not be combined to run consecutively.

(ii) If an applicant completes the basic training program and prior to taking the certification examination the division becomes aware of a falsification, the applicant shall not be allowed to take the certification examination.

(iii) An applicant who is dismissed during the course of a basic training program for falsifying any information to obtain certification shall not be eligible for further POST training or certification until the two-year waiting period has been met.

(iv) If an applicant becomes certifiable and then is subsequently discovered to have falsified information to obtain certified status, that individual may be subject to suspension of their POST certification.

(7) If the applicant is the subject of an ongoing investigation by the division, the applicant shall not be deemed eligible to attend a training program until the investigation is completed.

(8) If the division determines that the applicant meets all of the requirements in Sections 53-6-203 or 53-6-302, the division shall notify the applicant that the applicant is eligible to attend a training program.

(9) If the division determines that the applicant does not meet the requirements in Sections 53-6-203 or 53-6-302, the applicant shall be denied admission to a training program.

(10) Applicants who are accepted into a peace officer training program shall pass the POST physical fitness requirements for entrance into the specific training program as approved by the Council and outlined in POST policy and procedure 2390-Physical Training Requirements.

(11) Applicants who are accepted into a peace officer training program shall be subject to random and "for cause" drug testing as outlined in POST policy and procedure 2400-Drug Testing for Applicants and Cadets.

(12) Applicants seeking dispatcher certification must also provide evidence of:

(a) Utah Emergency Medical Dispatcher (EMD) certification;

(b) Bureau of Criminal Identification (BCI) proficiency certificate; and

(c) documentation showing completion of:

(i) Incident Command System (ICS) 100 training;

(ii) ICS 200 training; and

(iii) National Incident Management System (NIMS) 700 training.

R728-403-5. Completion of a Training Program.

(1) An applicant successfully completes the training program by:

(a) attending all required training courses;

(b) obtaining passing scores on all intermediate and subject specific tests; and

(c) participating in all required physical fitness, practical skill training and other required activities.

(2) Applicants shall be subject to all officially published policy at the training academy they attend.

(3) An applicant who fails to complete any portion of the academic training program may not take the certification examination.

(4) An applicant may take the certification examination prior to passing the physical fitness, defensive tactics, firearms, or emergency vehicle operations tests.

(5) An applicant who is unable to pass the physical fitness, defensive tactics or firearms tests, within one year after completing the training program or within one year of taking the certification examination shall be denied certification.

(6) An applicant who is unable to pass the emergency vehicle operations tests within one year from completion of the emergency vehicle operations training program shall be denied certification.

(7) An applicant who fails the certification examination shall have one opportunity to take a make-up examination within one year of the first examination.

(a) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes another approved basic training program.

(8) An applicant who successfully completes the training program shall be certified as a peace officer in the state of Utah.

R728-403-6. Waiver of Basic Training Program.

(1) An applicant who has not attended a training program offered by the division or a satellite academy, may seek to waive a training program by submitting a completed waiver packet to the division, which includes:

(a) a completed application packet as provided in R728-403-4;

(b) documentation showing that the applicant has completed training equivalent to the training program the applicant is seeking to waive, such as:

(i) a copy of the training curriculum;

(ii) the number of hours completed; and

(iii) the date the training was completed; and

(c) evidence of any prior employment as a dispatcher or peace officer that includes:

(i) a detailed job description; and

(ii) verification from the applicant's employer of the last date the applicant worked as a dispatcher or peace officer.

(2) Once the division has received a completed waiver packet, the division shall review the packet to determine if the training completed by the applicant is the equivalent of the training program the applicant seeks to waive.

(a) If the division does not have sufficient information to make this determination, the division may request that the applicant submit additional information.

(3) If the division determines the peace officer training completed by the applicant is the equivalent of the peace officer training program the applicant seeks to waive, and the program was completed less than four years prior to the date the applicant will take the certification examination, or the applicant has been actively engaged in performing the duties of a peace officer within the past four years, and the applicant meets all of the requirements in R728-403-4 and Sections 53-6-203 and 53-6-206, the applicant may take the physical fitness test and the certification examination.

(a) If the applicant passes both the physical fitness test and the certification examination, the applicant shall be certified as a peace officer in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes an approved basic training program.

(d) If the applicant fails to pass the physical fitness test, the applicant may be given additional opportunities to pass during regularly scheduled fitness tests provided by POST.

(e) The applicant must pass the certification examination and the physical fitness test within four years

from the date of completion of the original training program, or four years from the date they were last actively engaged in the duties of a peace officer.

(f) An applicant who successfully completes the waiver process for law enforcement officer certification or correctional officer certification shall be deemed to have also completed requirements for special functions officer certification.

(g) An applicant seeking to be certified as both a law enforcement officer and a correctional officer must complete the waiver process and pass the certification examinations for each of those peace officer classifications.

(4) If the division determines that the dispatcher training completed by the applicant is the equivalent of the training program the applicant seeks to waive, and the program was completed less than four years prior to the date the applicant will take the certification examination, or the applicant has been actively engaged in performing the duties of a dispatcher within the past four years, and the applicant meets all of the requirements in R728-403-4 and Sections 53-6-302 and 53-6-304, the applicant may take the certification examination.

(a) If the applicant passes the certification examination, the applicant shall be certified as a dispatcher in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes an approved basic training program.

(5) If the applicant fails to meet any of the requirements set forth in this rule, the applicant may not waive the training program.

R728-403-7. Reactivation of Certification.

(1) Pursuant to Section 53-6-208 or 53-6-306, the certification of a peace officer or dispatcher who has not been actively engaged in performing the duties of a peace officer or dispatcher for 18 months shall be designated "inactive".

(a) The certification of a peace officer or dispatcher that has been suspended for more than 18 consecutive months due to disciplinary action or failure to complete in-service training shall be considered "inactive".

(2) An applicant whose certification has become inactive may reactivate the applicant's peace officer or dispatcher certification by submitting a completed reactivation packet to the division, which includes:

(a) a completed application packet as provided in R728-403-4; and

(b) evidence of the applicant's prior employment as a dispatcher or peace officer.

(3) Once the division has received a completed reactivation packet, the division shall review the packet to determine if the applicant meets all of the requirements in Sections 53-6-203 and 53-6-208, or 53-6-302 and 53-6-306.

(a) If the division does not have sufficient information to make this determination, the division may request the applicant submit additional information.

(4) If an applicant for reactivation of peace officer certification meets all of the requirements in Sections 53-6-203 and 53-6-208, the applicant may take the physical fitness test and the certification examination as provided in R728-403-5.

(a) If the applicant passes both the physical fitness test and the certification examination, the applicant shall be certified as a peace officer in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily complete an approved basic training program.

(d) If an applicant fails to pass the physical fitness test, the applicant may be given additional opportunities to pass during regularly scheduled fitness tests provided by POST.

(4) If an applicant for reactivation of dispatcher certification meets all of the requirements in Sections 53-6-302 and 53-6-306, the applicant may take the certification examination, as provided in R728-403-5.

(a) If the applicant passes the certification examination, the applicant shall be certified as a dispatcher in the state of Utah.

(b) If the applicant fails to pass the certification examination they will be given one additional opportunity to pass the certification examination which must be completed within one year of the first examination.

(c) An applicants who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily complete an approved basic training program.

(5) If the applicant for reactivation of peace officer or dispatcher certification fails to meet any of these requirements, the applicant's certification may not be reactivated.

(6) The certification of a peace officer or dispatcher that has been suspended or inactive for more than four consecutive years shall be considered "lapsed" and the peace officer or dispatcher shall comply with the requirements in Section 53-6-208 or 53-6-306 before certification may be reinstated.

R728-403-8. Denial of Certification.

(1) An applicant shall be denied certification for failing to satisfy any of the requirements under administrative rule R728-403.

(2) An applicant who is the subject of an ongoing investigation by the division, or who is under court supervision for a state or federal criminal offense, may not be certified until the investigation has been completed and/or the court supervision has been terminated.

(3) If the division denies an applicant certification, the division shall issue a letter of denial by mail.

(a) The letter of denial shall state the reasons for denial and indicate that the applicant may appeal the decision to the director by filing a written request for review within 30 days from the date of the division's decision as provided by Section 63G-4-301.

(b) Within a reasonable time after receiving the appeal, the director shall review the matter and determine whether the applicant may be certified.

(c) If upon further review the director denies the applicant's appeal, the director shall notify the applicant by letter and indicate that the applicant has the right to appeal the director's decision by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

(4) An applicant who has been denied certification shall meet all of the requirements in this rule before being certified.

(5) All adjudicative proceedings under this rule shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

KEY: dispatchers, peace officers, certifications, waivers
August 23, 2016 **53-6-203**
Notice of Continuation December 13, 2011 **53-6-205**
53-6-206
53-6-208
53-6-302
53-6-303
53-6-304
53-6-306

R728. Public Safety, Peace Officer Standards and Training.
R728-410. Guidelines Regarding Annual Statutory Training.
R728-410-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-410-2. Purpose.

The purpose of this rule is to provide procedures regarding the reporting of annual statutory training.

R728-410-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Annual statutory training" means the annual training requirement for peace officers and dispatchers as established in sections 53-6-202 and 53-6-306;

(b) "In-service training" has the same meaning as annual statutory training;

(c) "Reporting year" means an annual period starting on July 1, and ending on June 30; and

(d) "Training year" means the same as reporting year.

R728-410-4. Annual Training Requirement.

(1) The director may waive a portion of the annual statutory training requirement under the following circumstances:

(a) a peace officer who is employed for only part of a year shall obtain three and one-half hours for each month employed during the reporting year;

(b) a dispatcher who is employed for only part of a year shall obtain one and three-fourth hours for each month employed during the reporting year; and

(c) a peace officer or dispatcher who terminates employment and then returns to work within 18 months shall be required to make up any annual training deficiency from the previous year.

(d) A peace officer or dispatcher who is on long term disability, medical leave, or restricted duty, may obtain a waiver of training by providing a letter from a physician stating that participation in any type of training, including watching video or computer based courses would be detrimental to the individual's health.

(e) A peace officer or dispatcher who is actively deployed in military service may obtain a waiver of training hours for active military service by submitting a copy of the active duty order to the division.

(i) The peace officer or dispatcher must obtain the prorated number of training hours for each month not actively deployed during the reporting year.

R728-410-5. Training Record Maintenance.

(1) The chief administrative officer of an agency employing peace officers or dispatchers shall be responsible for the recording of all training obtained by peace officers or dispatchers in his or her agency.

(2) The record must be accurate and available in the event of an audit or subpoena of training records.

(3) The training record shall contain the following:

(a) the subject or topic instructed;

(b) the number of classroom or field hours;

(c) the location and date of the training; and

(d) the name of the instructor.

R728-410-6. Reporting Training -- Agency Responsibility.

(1) At the conclusion of each training year, a chief administrative officer employing peace officers or certified dispatchers shall report to the division the number of training hours received by each officer or certified dispatcher employed by that agency at any time during the training year, regardless of the employee's current employment status.

(2) This report is due to the division by July 31.

(a) The report shall be submitted electronically and must contain the following information:

(i) name of the officer or dispatcher;

(ii) the POST identification number of each peace officer or dispatcher; and

(iii) the number of training hours received by each peace officer or dispatcher during the reporting year.

(3) The chief administrative officer shall follow procedures outlined in POST policy and procedures on reporting training hours.

R728-410-7. Authorized Training.

(1) All training offered by or though the division is authorized for in-service credit.

(2) The chief administrative officer of an agency may authorize other forms of training for peace officers or dispatchers employed by that agency.

(a) The chief administrative officer shall assume responsibility and liability for course content and instructor qualification not provided by the division.

R728-410-8. Suspension for Failure to Obtain Annual Statutory Training.

(1) The division shall suspend the certification of any peace officer or dispatcher who:

(a) fails to receive the required annual training hours by July 31; or

(b) for whom the chief administrative officer of the employing agency fails to report required training hours to the division by July 31.

(2) The individual and the employing agency shall be notified of this action in writing.

(3) The suspension shall remain in effect until the deficient training hours are completed and reported to the division.

(4) The division shall notify the individual and employing agency when the certification has been reinstated.

(5) If the individual fails to make up the deficient training by October 1, the individual's name shall be reported to Utah Retirement Systems (URS) for determination by URS as to how the deficient hours may affect the individual's retirement credit.

(a) Deficient hours reported to the division after October 1, shall only be used to reinstate peace officer status and will not be reported to URS.

(6) Training received by a suspended officer or dispatcher in a new training year shall be credited to the previous deficient training year until the deficiency is satisfied.

(a) Training hours used to satisfy an old deficiency may not be credited to the new training year.

KEY: law enforcement officers, annual training

August 23, 2016	**53-6-105**
Notice of Continuation December 21, 2011	**53-6-202**
	53-6-306

R728. Public Safety, Peace Officer Standards and Training.
R728-411. Guidelines for Administrative Action Against Individuals Functioning As Peace Officers Without Valid Peace Officer Certification.
R728-411-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-411-2. Purpose.

The purpose of this rule is to provide procedures for administrative action when an individual is found to be exercising the authority of a peace officer without valid peace officer certification.

R728-411-3. Definitions.

Terms used in this rule are defined in Section 53-6-102.

R728-411-4. Impersonating a Peace Officer.

(1) If the division becomes aware that an individual is illegally exercising the authority of a peace officer, the division shall refer the matter to the proper law enforcement agency having jurisdiction, for the following circumstances:

(a) when an individual has never been certified as a peace officer;

(b) when an individual's certification has been revoked by the council; and

(c) when an individual's certification has lapsed pursuant to Section 53-6-208.

R728-411-5. Unauthorized Exercise of Authority.

(1) If the division becomes aware that an individual whose peace officer certification is not currently active is exercising the authority of a peace officer, the division shall follow the administrative process outlined in Section R728-411-6, for the following circumstances;

(a) when an individual's certification has been suspended by the council;

(b) when an individual's certification has been suspended due to an annual training deficiency pursuant to Section 53-6-202;

(c) when an individual's certification has been designated "inactive" pursuant to Section 53-6-208; and

(d) when an individual has completed a basic training program and become certified, but is not "sworn" as provided in Sections 53-13-103 to 53-13-106.

(2) In any of the above circumstances the division may also refer the matter to the proper law enforcement agency having jurisdiction.

R728-411-6. Procedures Governing Unauthorized Exercise of Authority.

(1) If an individual is found to be performing the duties and functions of a peace officer without valid certification or authority as outlined in Section R728-411-5, the following procedures will be initiated by the division:

(a) written notice will be sent by standard mail, or electronically, to the individual and the individual's employing agency administrator indicating that the individual does not have the statutory authority to act as a peace officer in the State of Utah;

(b) The written notice shall:

(i) state that the individual should cease any and all activities as a peace officer; and

(ii) indicate the appropriate procedures for the individual and employing agency to follow in order for the individual to acquire peace officer authority.

(c) The individual must respond to the written notice within ten business days.

(2) Failure to submit a response within ten business days or failure to immediately cease the unauthorized exercise of authority, shall cause the division to seek a writ from the Attorney General's Office to cease and desist from acting as a peace officer in the State of Utah.

(a) The writ will be directed to the individual and the individual's employing agency.

(3) Failure to cease the unauthorized exercise of authority after the issuance of the writ, may result in:

(a) criminal charges being sought against the individual for a violation of Section 76-8-512.; and

(b) administrative action against the individual's certification for a violation of Section 53-6-211.

KEY: peace officer certification, impersonating a peace officer

August 23, 2016	**53-6-105**
Notice of Continuation January 6, 2012	**53-6-202**
	53-6-208
	53-13-103
	53-13-106

R728. Public Safety, Peace Officer Standards and Training.
R728-502. Procedure for POST Instructor Certification.
R728-502-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-502-2. Purpose.

The purpose of this rule is to provide guidelines for the certification of training instructors and to establish standards for the revocation of POST instructor certification pursuant to Section 53-6-105(1)(c).

R728-410-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Annual statutory training" means the annual training requirement for peace officers and dispatchers as established in Sections 53-6-202 or 53-6-306;

(b) "Applicant" means an individual who has applied to become a POST certified instructor;

(c) "Basic training" means the basic training courses offered by the division or one of the satellite academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher;

(d) "DT" means defensive tactics;

(e) "EVO" means emergency vehicle operation;

(f) "IW" means impact weapon;

(g) "In-service training" has the same meaning as annual statutory training;

(h) "K9" means canine;

(i) "POST certified instructor" means an individual who has completed the requirements set forth in this rule and is authorized by the division to conduct basic training courses;

(j) "Satellite academy" means a certified academy or training program administered by a governmental entity or institution of higher education which is established primarily for the training of its employees or self-sponsored applicants; and

(k) "Specialty instructor" means an individual who has completed the requirements set forth in this rule and is authorized by the division to conduct specific practical skill training courses.

R728-502-4. POST Certified Instructors Authority and Duties.

(1) A POST certified instructor shall be authorized to teach classes sponsored by the division including basic training, in-service, and regional classes.

(2) An instructor presenting in-service training must be in harmony with the division's current basic training curriculum.

(3) An instructor presenting basic training classes must follow the basic training student performance objectives approved by the division and the council.

(a) If POST approved student performance objectives are not available for the subject matter, an instructor shall have a lesson plan approved by the division prior to teaching in a basic training class.

R728-502-5. Instructor Certification Requirements.

(1) An applicant must meet the following requirements before being certified as an instructor:

(a) have two years of experience as a full-time peace officer or dispatcher;

(b) receive a recommendation from the chief administrative officer of the agency employing the applicant; and

(c) complete an approved instructor development course or specialty instructor certification course as outlined below.

(2) The requirements in this Subsection (1) may be waived if the applicant has specialized training or expertise in an area which, in the opinion of the director, would be beneficial in the training of law enforcement officers.

(a) An individual wishing to qualify for instructor certification wavier under this Subsection (2), must submit a written request to the director providing evidence of their specialized training or experience and justification as to why this training or experience would be beneficial in the training of law enforcement officers.

R728-502-6. Instructor Recertification.

(1) Instructor recertification is not required except in specialty areas as provided in Section R728-502-9.

(2) An instructor teaching in a professional specialty area, including but not limited to, law classes, first aid, CPR, intoxilyzer, and chemical munitions, shall maintain current certification and continuing education requirements of the respective professional certification or licensing entity.

(3) An instructor teaching in other specialty areas may be subject to industry standards that establish specific recertification requirements.

R728-502-7. Application for Instructor Certification.

(1) To obtain a POST instructor certification, an applicant shall submit a completed application for POST Instructor Development School to the division and include the following:

(a) documentation of years of experience;

(b) a letter of recommendation from the applicant's chief administrative officer; and

(c) documentation of specialized training.

(2) If the application is approved, the applicant shall be invited to attend a POST instructor development course.

(3) An applicant shall receive POST instructor certification upon successfully completing the instructor development course, which includes demonstrating to the course instructor the ability to develop a lesson plan following the style and format taught in the instructor development course.

R728-502-8. Agency In-Service Instructors.

(1) An agency is not required to utilize POST certified instructors for in-service training programs presented to members of their agency, which will allow the agency to formulate training programs designed to meet their needs utilizing local resources.

(2) If a POST certified instructor is not used for in-service training programs, the chief administrative officer of the agency sponsoring the training shall be solely responsible for the content of the class and the qualifications of the instructor.

R728-502-9. Specialty Instructors.

(1) An instructor who teaches practical skills and technical or high liability law enforcement subjects shall attend a specialty instructor course as provided in this Section.

(2) An instructor who completes a specialty instructor school may only instruct the specific skills covered in the specialty instructor school.

(a) An instructor who teaches other academic courses in

the classroom shall complete a POST approved instructor development course as provided in Sections R728-502-4 through R728-502-7.

(3) An EVO instructor shall be trained and certified in accordance with POST policy and procedure.

(a) EVO instructor certification shall be valid for three years from the date of issue.

(b) An EVO instructor must teach EVO for a minimum of 40 hours every three years in order to maintain certification.

(c) An EVO instructor must teach at least 20 of the 40 required hours at the POST EVO range under the direction of the POST EVO training supervisor.

(d) An EVO instructor may teach the remaining 20 hours of EVO instruction at individual agencies.

(4) A firearms instructor, including handgun instructor or rifle instructor, shall be trained and certified in accordance with POST policy and procedure.

(a) Firearms instructor certification is valid for three years from the date of issue.

(b) A firearms instructor must attend an eight hour recertification class conducted by POST and pass a practical examination every three years in order to maintain certification.

(5) A DT instructor shall be trained and certified in accordance with POST policy and procedure;

(a) DT instructor certification is valid for three years from the date of issue.

(b) A DT instructor must attend a POST defensive tactics instructor training course and successfully pass a practical and written examination every three years in order to maintain certification.

(6) An IW instructor shall be trained and certified in accordance with POST policy and procedure.

(a) IW instructor certification is valid for three years from the date of issue.

(b) An IW instructor must attend an impact weapon instructor training course and successfully pass a practical and written examination every three years in order to maintain certification.

(7) A K-9 instructor shall be trained and certified in accordance with POST policy and procedure.

(a) A K-9 instructor may conduct K-9 training, but is not authorized to conduct K-9 certification evaluations.

(b) K-9 instructor certification is valid for three years from the date of issue.

(c) A K-9 instructor shall attend 40 hours of K-9 instructor training and successfully pass a practical examination every three years in order to maintain certification

(8) A K-9 judge shall be trained and certified in accordance with POST policy and procedure.

(a) A K-9 judge shall be trained and certified as a K-9 instructor prior to being certified as a K-9 judge.

(b) A K-9 judge may conduct K-9 certification evaluations and K-9 training.

(c) K-9 judge certification is valid for three years from the date of issue.

(d) A K-9 judge shall attend 40 hours of K-9 judge training and successfully pass a practical examination every three years in order to maintain certification.

(e) A K-9 judge who successfully re-certifies is automatically re-certified as a K-9 instructor.

(9) RADAR/LIDAR instructors shall be trained and certified in accordance with POST policy and procedure;

(a) RADAR/LIDAR instructor certification is valid for three years from the date of issue.

(b) A RADAR/LIDAR instructor shall participate in one RADAR/LIDAR instructor school and successfully pass a written examination every three years in order to maintain certification.

R728-502-10. Revocation of Instructor Certification.

(1) The division may revoke an individual POST instructor certification if the instructor fails to meet any of the requirements specified in this rule.

(2)(a) If the division revokes an individual's POST instructor certification, the division shall issue a letter to the individual by regular mail.

(b) The letter shall state the reasons for termination of the individual's POST instructor certification and indicate that the individual has a right to appeal the decision to the director by filing a written request for review within 30 days from the date of the division's decision.

(3) An instructor whose peace officer or dispatcher certification is suspended or revoked by the POST Council, in accordance with Section 53-6-211 or Section 53-6-309, shall also have his or her POST instructor certification revoked or suspended for the period of time his or her peace officer or dispatcher certification is suspended.

KEY: peace officers, instructor certification, in-service training; basic training

August 23, 2016	**53-6-105**
Notice of Continuation March 19, 2014	**53-6-202**
	53-6-306

R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-1. General Provisions.

A. Title -- These rules shall be known and may be cited as the Residential Utility Service Rules.

B. Purpose -- The purpose of these Rules is to establish and enforce uniform residential utility service practices and procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

C. Policy --

1. The policy of these rules is to assure the adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide residential utility service, to provide functional alternatives to termination or refusal to provide residential utility service, and to establish and enforce fair and equitable procedures governing eligibility, deposits, account billing, termination, and deferred payment agreements.

2. Nondiscrimination -- Residential utility service shall be provided to qualified persons without regard to employment, occupation, race, handicap, creed, sex, national origin, marital status, or number of dependents.

D. Requirement of Good Faith -- Each agreement or obligation within these rules imposes an obligation of good faith, honesty, and fair dealings in its performance and enforcement.

E. Customer Information -- When residential service is extended to an account holder, a public utility shall provide the consumer with a consumer information pamphlet approved by the Commission which clearly describes and summarizes the substance of these rules. The utility shall mail or deliver a copy of this pamphlet, or a summarized version approved by the Commission, to its residential customers annually in September or October. Copies of this pamphlet shall be prominently displayed in the business offices maintained by the utility and furnished to consumers upon request. The utility has a continuing obligation to inform its consumers of significant amendments to these rules. Each utility with over 10,000 customers receiving service shall print and make available upon request a Spanish edition of a consumer information pamphlet. The English edition of the pamphlet shall contain a prominent notice, written in Spanish and English, that the utility has a Spanish edition of its pamphlet and whether or not it has qualified personnel available to help Spanish-speaking customers. In this section, utilities with fewer than 10,000 users may use the pamphlets printed by the Division of Public Utilities for the distribution and availability requirements.

F. Scope --

1. These rules shall apply to gas, water, sewer, and electric utilities that are subject to the regulatory authority of the Commission. Except as provided in R746-200-7(G)(4), Notice of Proposed Termination, these rules do not apply to master metered apartment dwellings. Commercial, industrial, government accounts and special contracts are also excluded from the requirements of these rules.

2. Upon a showing that specified portions of these rules impose an undue hardship and provide limited benefit to its customers, a utility may petition the Commission for an exemption from specified portions of these rules.

G. Customer's Statement of Rights and Responsibilities -- When utility service is extended to an account holder, annually, and upon first notice of an impending service disconnection, a public utility shall provide a copy of the "Customer's Statement of Rights and Responsibilities" as approved by the Commission. The Statement of Rights and Responsibilities shall be a single page document. It shall be prominently displayed in each customer service center.

R746-200-2. General Definitions.

A. "Account Holder" -- A person, corporation, partnership, or other entity which has agreed with a public utility to pay for receipt of residential utility service and to which the utility provides service.

B. "Applicant" -- As used in these rules means a person, corporation, partnership, or other entity which applies to a public utility for residential utility service.

C. "Budget Billing" -- Monthly residential payment plan under which the customer's estimated annual billing is divided into 12 monthly payments.

D. "Deferred Payment Agreement" -- As used in these rules means an agreement to receive, or to continue to receive, residential utility service pursuant to Section R746-200-5 and to pay an outstanding debt or delinquent account owed to a public utility.

E. "Residential Utility Service" -- Means gas, water, sewer, and electric service provided by a public utility to a residence.

F. "Termination of Service" -- The terms "termination," "disconnection," and "shutoff" as used in these rules are synonymous and mean the stopping of service for whatever cause.

G. "Load Limiter" -- Device which automatically interrupts electric service at a residence when the preset kW demand is exceeded. Service is restored when the customer decreases usage and then presses the reset button on the device.

R746-200-3. Deposits, Eligibility for Service, and Shared Meter or Appliance.

A. Deposits and Guarantees --

1. Each utility shall submit security deposit policies and procedures to the Commission for its approval before the implementation and use of those policies and procedures. Each utility shall submit third-party guarantor policies and procedures to the Commission.

2. Each utility collecting security deposits shall pay interest thereon at a rate as established by the Commission. For electric cooperatives and electric service districts, interest rates shall be determined by the governing board of directors of the cooperative or district and filed with the Commission and shall be deemed approved by the Commission unless ten percent or more of the customers file a request for agency action requesting an investigation and hearing. The deposit paid, plus accrued interest, is eligible for return to the customer after the customer has paid the bill on time for 12 consecutive months.

3. A residential customer shall have the right to pay a security deposit in at least three equal monthly installments if the first installment is paid when the deposit is required.

B. Eligibility for Service --

1. Residential utility service is to be conditioned upon payment of deposits, where required, and of any outstanding debts for past utility service which are owed by the applicant to that public utility, subject to Subsections R746-200-3(B)(2), and R746-200-7(C)(2), Reasons for Termination. Service may be denied when unsafe conditions exist, when the applicant has furnished false information to get utility service, or when the customer has tampered with utility-owned equipment, such as meters and lines. An applicant is ineligible for service if at the time of application, the applicant is cohabiting with a delinquent account holder, whose utility service was previously disconnected for non-payment, and the applicant and delinquent account holder also cohabited while the delinquent account holder received the utility's service, whether the service was received at the applicants present address or another address.

2. When an applicant cannot pay an outstanding debt in

full, residential utility service shall be provided upon execution of a written, deferred payment agreement as set forth in Section R746-200-5.

C. Shared Meter or Appliance - In rental property where one meter provides service to more than one unit or where appliances provide service to more than one unit or to other occupants at the premises, and this situation is known to the utility, the utility will recommend that service be in the property owner's name and the property owner be responsible for the service. However, a qualifying applicant will be allowed to put service in their own name provided the applicant acknowledges that the request for services is entered into willingly and he has knowledge of the account responsibility.

R746-200-4. Account Billing.

A. Billing Cycle -- Each gas, electric, sewer and water utility shall use a billing cycle that has an interval between regular periodic billing statements of not greater than two months. This section applies to permanent continuous service customers, not to seasonal customers.

B. Estimated Billing --

1. A gas, electric, sewer or water public utility using an estimated billing procedure shall try to make an actual meter reading at least once in a two-month period and give a bill for the appropriate charge determined from that reading. When weather conditions prevent regular meter readings, or when customers are served on a seasonal tariff, the utility will make arrangements with the customer to get meter reads at acceptable intervals.

2. If a meter reader cannot gain access to a meter to make an actual reading, the public utility shall take appropriate additional measures in an effort to get an actual meter reading. These measures shall include, but are not limited to, scheduling of a meter reading at other than normal business hours, making an appointment for meter reading, or providing a prepaid postal card with a notice of instruction upon which an account holder may record a meter reading. If after two regular route visits, access has not been achieved, the utility will notify the customer that he must make arrangements to have the meter read as a condition of continuing service.

3. If, after compliance with Subsection R746-200-4(B)(2), a public utility cannot make an actual meter reading it may give an estimated bill for the current billing cycle in accordance with Subsection R746-200-7(C)(1)(f), Reasons for Termination.

C. Periodic Billing Statement -- Except when a residential utility service account is considered uncollectible or when collection or termination procedures have been started, a public utility shall mail or deliver an accurate bill to the account holder for each billing cycle at the end of which there is an outstanding debit balance for current service, a statement which the account holder may keep, setting forth each of the following disclosures to the extent applicable:

1. the outstanding balance in the account at the beginning of the current billing cycle using a term such as "previous balance";

2. the amount of charges debited to the account during the current billing cycle using a term such as "current service";

3. the amount of payments made to the account during the current billing cycle using a term such as "payments";

4. the amount of credits other than payments to the account during the current billing cycle using a term such as "credits";

5. the amount of late payment charges debited to the account during the current billing cycle using a term such as "late charge";

6. the closing date of the current billing cycle and the outstanding balance in the account on that date using a term such as "amount due";

7. a listing of the statement due date by which payment of the new balance must be made to avoid assessment of a late charge;

8. a statement that a late charge, expressed as an annual percentage rate and a periodic rate, may be assessed against the account for late payment;

9. the following notice: "If you have any questions about this bill, please call the Company."

D. Late Charge --

1. Commencing not sooner than the end of the first billing cycle after the statement due date, a late charge of a periodic rate as established by the Commission may be assessed against an unpaid balance in excess of new charges debited to the account during the current billing cycle. The Commission may change the rate of interest.

2. No other charge, whether described as a finance charge, service charge, discount, net or gross charge may be applied to an account for failure to pay an outstanding bill by the statement due date. This section does not apply to reconnection charges or return check service charges.

E. Statement Due Date -- An account holder shall have not less than 20 days from the date the current bill was prepared to pay the new balance, which date shall be the statement due date.

F. Disputed Bill --

1. In disputing a periodic billing statement, an account holder shall first try to resolve the issue by discussion with the public utility's collections personnel.

2. When an account holder has proceeded pursuant to Subsection R746-200-4(F)(1), the public utility's collections personnel shall investigate the disputed issue and shall try to resolve that issue by negotiation.

3. If the negotiation does not resolve the dispute, the account holder may obtain informal and formal review of the dispute as set forth in Section R746-200-8, Informal Review, and R746-200-9, Formal Review.

4. While an account holder is proceeding with either informal or formal review of a dispute, no termination of service shall be permitted if amounts not disputed are paid when due.

G. Unpaid Bills - Utilities transferring unpaid bills from inactive or past accounts to active or current accounts shall follow these limitations:

1. A utility company may only transfer bills between similar classes of service, such as residential to residential, not commercial to residential.

2. Unpaid amounts for billing cycles older than four years before the time of transfer cannot be transferred to an active or current account.

3. The customer shall be provided with an explanation of the transferred amounts from earlier billing cycles and informed of the customer's ability to dispute the transferred amount.

4. The customer may dispute the transferred amount pursuant to R746-200-4(F).

R746-200-5. Deferred Payment Agreement.

A. Deferred Payment Agreement --

1. An applicant or account holder who cannot pay a delinquent account balance on demand shall have the right to receive residential utility service under a deferred payment agreement subject to R746-200-5(B) unless the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service. If the delinquent account balance is the result of unauthorized usage of, or diversion of, residential utility service, the use of a deferred

payment agreement is at the utility's discretion.

2. An applicant or account holder shall have the right to a deferred payment agreement, consisting of 12 months of equal monthly payments, if the full amount of the delinquent balance plus interest shall be paid within the 12 months and if the applicant or account holder agrees to pay the initial monthly installment. The account holder shall have the right to pre-pay a monthly installment, pre-pay a portion of, or the total amount of the outstanding balance due under a deferred payment agreement at any time during the term of the agreement. The account holder also has the option, when negotiating a deferred payment agreement, to include the amount of the current month's bill plus the reconnection charges in the total amount to be paid over the term of the deferred payment agreement.

3. Payment Options

a. If a utility has a budget billing or equal payment plan available, it shall offer the account holder the option of:

i. agreeing to pay monthly bills for future residential utility service as they become due, plus the monthly deferred payment installment, or

ii. agreeing to pay a budget billing or equal payment plan amount set by the utility for future residential utility service plus the monthly deferred payment installment.

b. When negotiating a deferred payment agreement with a utility that does not offer a budget billing or equal payment plan, the account holder shall agree to pay the monthly bills for future residential utility service plus the monthly deferred payment installment necessary to liquidate the delinquent bill.

4. The terms of the deferred payment agreement shall be set forth in a written agreement, a copy of which shall be provided to the customer.

5. A deferred payment agreement may include a finance charge as approved by the Commission. If a finance charge is assessed, the deferred payment agreement shall contain notice of the charge.

B. Breach -- If an applicant or account holder breaches a condition or term of a deferred payment agreement, the public utility may treat that breach as a delinquent account and shall have the right to disconnect service pursuant to these rules, subject to the right of the customer to seek review of the alleged breach by the Commission, and the account holder shall not have the right to a renewal of the deferred payment agreement. Renewal of deferred payment agreements after the breach shall be at the utility's discretion.

R746-200-6. Reconnection of Discontinued Service.

A. Public utilities shall have personnel available 24 hours each day to reconnect utility service. Service shall be reconnected as soon as possible, but no later than the next generally recognized business day after the customer has requested reconnection and complied with all necessary conditions for reconnection of service; which may include payment of reconnection charges and compliance with deferred payment agreement terms.

B. If a customer requests reconnection or other services outside of the utility's normal business days or hours of operation, the utility shall inform the customer of any additional charges or terms, as specified in the utility's tariff provisions, applicable to the customer's request.

R746-200-7. Termination of Service.

A. Definitions. As used in this section (R746-200-7):

1. "Licensed medical provider" means a medical provider:

a. who holds a current and active medical license under Utah Code Title 58; and

b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical provider under this rule.

2. "Life-supporting equipment" means life-supporting medical equipment:

a. with normal operation that requires continuation of public utility service; and

b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. "Life-supporting equipment statement" means a written statement:

a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and

b. including:

i. a description of the medical need of the account holder or resident who utilizes life-supporting equipment;

ii. the account holder's name and address;

iii. name of resident using life-supporting equipment and relationship to account holder, if different than account holder;

iv. the health infirmity and expected duration;

v. identification of the life-support equipment that requires the utility's service;

vi. a determination by the licensed medical provider that immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations; and

vii. the name and contact information of the licensed medical provider for the resident who utilizes life-supporting equipment,

4. "Serious illness or infirmity statement" means a written statement:

a. signed by a licensed medical provider;

b. written on:

i. a form obtained from the public utility; or

ii. the licensed medical provider's letterhead stationary;

c. legibly describing:

i. a diagnosed medical condition under which termination of utility service will injure the person's health or aggravate the person's illness; and

ii. the anticipated duration of the diagnosed medical condition.

B. Delinquent Account --

1. A residential utility service bill that has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if the account holder has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of

these rules shall be issued to the account holder with the first notice of impending service disconnection.

C. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service -- Medical Reasons --

1. Serious Illness or Infirmity. If a public utility receives a serious illness or infirmity statement:

a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;

b. the public utility is not required to provide the continuation or restoration described in R746-200-7.D.1.a. more than two times to an individual customer or residence during the same calendar year; and

c. the account holder is liable for the cost of residential utility service during the period of continued or restored service.

2. Life-Supporting Equipment.

a. After receiving a life-supporting equipment statement, the public utility:

i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;

ii. may not terminate service to the residence unless the public utility has complied with this Subsection (R746-200-7.D.2); and

iii. may request annual verification from the licensed medical provider of the life-supporting equipment.

b. A public utility may terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification, if:

i. the account is in default;

ii. the public utility has:

AA. followed R746-200-5 on offering a deferred payment agreement; or

BB. if R746-200-5 does not apply, allowed the customer one month to enter into a deferred payment agreement that may last up to 12 months;

iii. after complying with R746-200-7.D.2.b.ii, the public utility has provided to the customer a written notice of proposed termination of service that:

AA. clearly and plainly informs the customer of the customer's rights under R746-200-7.D.2 and of the customer's right to an expedited complaint hearing under R746-200-8.E.; and

BB. complies with R746-200-7.G.1;

iv. the public utility has provided to the customer a 48 hour notice of termination of utility service that complies with R746-200-7.G.2; and

v. the public utility has complied with all other applicable provisions of R746-200-7.

c. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

E. Payments from the Home Energy Assistance Target (HEAT) Program -- Suppliers may not discontinue utility service to a low-income household for at least 30 days after receiving utility payment or verification of utility payment from the HEAT Program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, or at least 30 calendar days before a proposed termination if the residential utility service customer has provided to the public utility a life-supporting equipment statement, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day or 30-day time period is computed from the date the notice is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address, website, and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3.a.i. A public utility that issues a 30-day notice of termination of service to a customer who has provided the public utility with a life-supporting equipment statement shall provide to the Division an electronic copy of the notice at or before the time the public utility issues the notice to the customer.

ii. Within two business days after receiving the electronic notice described in this Subsection (G)(3)(a)(i), the Division shall provide a letter to the account holder by regular mail:

AA. informing the account holder that the public utility has issued a notice of termination;

BB. noting the method and deadline by which the account holder may request an expedited hearing from the Commission; and

CC. directing the account holder to contact the public utility for additional information.

b. A public utility shall send duplicate copies of 10-day or 30-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which the customer wants service disconnected to the customer's residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which the customer wants service disconnected and sign an affidavit that the customer is not requesting termination of service as a means of evicting the customer's tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Disabled -- The state recognizes that the elderly and disabled may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and disabled due to communication barriers that may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-7(D)(1), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D)(2), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and disabled persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

R746-200-8. Informal Review.

A. A person who is unable to resolve a dispute with the utility concerning a matter subject to Public Service Commission jurisdiction may obtain informal review of the dispute by a designated employee within the Division of Public Utilities. This employee shall investigate the dispute, try to resolve it, and inform both the utility and the consumer of his findings within five business days from receipt of the informal review request. Upon receipt of a request for informal review, the Division employee shall, within one business day, notify the utility that an informal complaint has been filed. Absent unusual circumstances, the utility shall attempt to resolve the complaint within five business days. In

no circumstances shall the utility fail to respond to the informal complaint within five business days. The response shall advise the complainant and the Division employee regarding the results of the utility's investigation and a proposed solution to the dispute or provide a timetable to complete any investigation and propose a solution. The utility shall make reasonable efforts to complete any investigation and resolve the dispute within 30 calendar days. A proposed solution may be that the utility request that the informal complaint be dismissed if, in good faith, it believes the complaint is without merit. The utility shall inform the Division employee of the utility's response to the complaint, the proposed solution and the complainant's acceptance or rejection of the proposed solution and shall keep the Division employee informed as to the progress made with respect to the resolution and final disposition of the informal complaint. If, after 30 calendar days from the receipt of a request for informal review, the Division employee has received no information that the complainant has accepted a proposed solution or otherwise completely resolved the complaint with the utility, the complaint shall be presumed to be unresolved.

B. Mediation -- If the utility or the complainant determines that they cannot resolve the dispute by themselves, either of them may request that the Division attempt to mediate the dispute. When a mediation request is made, the Division employee shall inform the other party within five business days of the mediation request. The other party shall either accept or reject the mediation request within ten business days after the date of the mediation request, and so advise the mediation-requesting party and the Division employee. If mediation is accepted by both parties or the complaint continues to be unresolved 30 calendar days after receipt, the Division employee shall further investigate and evaluate the dispute, considering both the customer's complaint and the utility's response, their past efforts to resolve the dispute, and try to mediate a resolution between the complainant and the utility. Mediation efforts may continue for 30 days or until the Division employee informs the parties that the Division has determined that mediation is not likely to result in a mutually acceptable resolution, whichever is shorter.

C. Division Access to Information During Informal Review or Mediation -- The utility and the complainant shall provide documents, data or other information requested by the Division, to evaluate the complaint, within five business days of the Division's request, if reasonably possible or as expeditiously as possible, if they cannot be provided within five business days.

D. Commission Review -- If the utility has proposed that the complaint be dismissed from informal review for lack of merit and the Division concurs in the disposition, if either party has rejected mediation or if mediation efforts are unsuccessful and the Division has not been able to assist the parties in reaching a mutually accepted resolution of the informal dispute, or the dispute is otherwise unresolved between the parties, the Division in all cases shall inform the complainant of the right to petition the Commission for a review of the dispute, and shall make available to the complainant a standardized complaint form with instructions approved by the Commission. The Division itself may petition the Commission for review of a dispute in any case which the Division determines appropriate. While a complainant is proceeding with an informal or a formal review or mediation by the Division or a Commission review of a dispute, no termination of service shall be permitted, if any amounts not disputed are paid when due, subject to the utility's right to terminate service pursuant to R746-200-7(F), Termination of Service Without Notice.

E. Notwithstanding any other provision of this rule (R746-200-8), a customer who has provided to a public utility a life-supporting equipment statement and who has received the 30-day written notice of proposed termination of service described in R746-200-7.D.2 may bypass informal review and receive an expedited hearing before the Commission if the Commission receives a written complaint and request for a hearing from the customer within 10 calendar days after the date the notice is postmarked.

R746-200-9. Formal Agency Proceedings Based Upon Complaint Review.

The Commission, upon its own motion or upon the petition of any person, may initiate formal or investigative proceedings upon matters arising out of informal complaints.

R746-200-10. Penalties.

A. A residential account holder who claims that a regulated utility has violated a provision of these customer service rules, other Commission rules, company tariff, or other approved company practices may use the informal and formal grievance procedures. If considered appropriate, the Commission may assess a penalty pursuant to Section 54-7-25.

B. Fines collected shall be used to assist low income Utahns to meet their basic energy needs.

KEY: public utilities, rules, utility service shutoff
August 8, 2016 54-4-1
Notice of Continuation November 28, 2012 54-4-7
54-7-9
54-7-25

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they are able to recover the reasonable and prudent costs of providing basic telecommunications service while charging just, reasonable and affordable rates; and,

2. to ensure funds collected and disbursed from the USF are used efficiently and in the public interest.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

J. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file

reports with the Commission containing information on the average revenue per line calculations, projections of future USF needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed is as follows:

1. through September 30, 2016, 1 percent of billed intrastate retail rates; and

2. beginning October 1, 2016, 1.65 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Floor.

1. Unless a petition brought pursuant to Subsection (B)(2) is granted after adjudication, to be eligible for USF subsidization, a telecommunications corporation shall charge, at a minimum, the following Affordable Base Rate for basic telecommunications service:

a. As of July 1, 2016:

i. $18 per residential line; and

ii. $26.00 per business line.

b. As of July 1, 2017:

i. $20 per residential line; and

ii. $26.00 per business line.

2.a. A telecommunications corporation may petition the Commission to deviate from the Affordable Base Rate set forth in this Subsection (B)(1).

b. A telecommunications corporation that files a petition under this Subsection (B)(2)(a) shall:

i. demonstrate that the Affordable Base Rate is not reasonable in the particular geographic area served; or

ii. impute income up to the Affordable Base Rate in calculating the telecommunications corporation's state USF subsidization.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone

Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from total embedded costs. Total embedded costs shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and

the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from the total project cost.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

KEY: affordable base rate, public utilities, telecommunications, universal service fund

August 22, 2016 54-3-1
Notice of Continuation November 13, 2013 54-4-1
54-8b-15(8)

R907. Transportation, Administration.
R907-1. Administrative Procedures.
R907-1-1. General Provisions.

All applications, Requests for Agency Action, Notices of Agency Action, and requests for review shall be processed as informal adjudicative proceedings pursuant to Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), unless another rule specifically designates a proceeding as formal or either party requests conversion to a formal proceeding and the presiding officer decides that conversion is in the public interest and does not prejudice the rights of any party. An evidentiary hearing will be held only for formal adjudicative proceedings. However, nothing in this rule is intended to prohibit the presiding officer from holding a meeting of all parties for purposes of settlement, fleshing out of the issues, oral argument, or presentation of evidence. Adjudicative proceedings are subject to agency review pursuant to Section 63G-4-301, only when statute or a rule specifically provides for review. This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA). When used in these rules, "director" means Presiding Officer except when used as Executive Director.

R907-1-2. Commencement by Department -- Notice of Agency Action -- Procedures.

(1) An adjudicative proceeding commenced by the department is initiated by a Notice of Agency Action, which the department shall mail or personally deliver to the person or persons against whom the action is proposed to be taken (respondents). UDOT shall publish the Notice of Agency Action if required by statute, any other rule, or the Utah Transportation Commission.

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;

(e) a statement that, if the person requests an appeal of the agency action, the adjudicative proceeding will be conducted informally pursuant to these rules unless either the department or the respondent requests conversion to a formal adjudicative proceeding and the appropriate presiding officer identified in R907-1-3(2) grants the request;

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

(g) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(h) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(i) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount; and

(j) a statement that the respondent is entitled to agency review if he or she files a Request for Agency Review with the initiating division or office within 30 days from the date the Notice is deposited in U.S. Mail or personally served.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by sending a written request for review to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-3. Commencement By a Member of the Public -- Complete or Partial Denials of Applications or Requests for Agency Action -- Default.

(1) If the department denies, either completely or in part, an application or Request for Agency Action and that action is subject to agency review, the division or office issuing the denial shall send to the applicant a written reply as promptly as possible. The reply should include a brief summary of the reasons for the decision along with a listing of any statutes or rules that were interpreted or relied upon for it, along with UDOT's file or reference number. It shall advise the applicant of his or her right to request agency review by filing a written request with the initiating division or office within 30 days after issuance of the notice. In addition, the reply shall inform the applicant that his written request for review must include any supporting documentation, including legal memoranda, that he or she wishes to be considered. The reply shall constitute the proposed order of the division or office making the decision and shall so indicate on the reply. If there is no appeal within 30 days, it shall become the final order of the department.

(2) Upon receiving a Request for Agency Review, the division or office shall first evaluate it to determine whether it meets the requirements of Section 63G-4-301(1), i.e., whether it is signed, states the grounds upon which review is requested, the relief sought, and stating the date upon which it was mailed. If the request does not meet the statutory requirements, or was received at the division or office after the 30-day appeals period, it shall be returned to the sender with explanation as to the reason for the return. If the request meets the statutory requirements, the division or office shall promptly forward the material and a copy of any relevant material in its files to:

(a) the Operations Engineer, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the Deputy Director, if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Project Development Director or designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves

something other than the items listed in Subsections (a), (b), or (c), and a specific appellate procedure is not otherwise specified in these rules or in statute;

(e) the Executive Director or designee, if the action involves something other than the items listed in subsections (a), (b), (c), or (d) and was initiated by department personnel located at department headquarters at the Calvin Rampton Complex.

(3) The positions listed above shall be the respective presiding officers. However, either the Executive Director or Deputy Director may designate another to act as a substitute. Additionally, when called to preside over adjudicative proceeding that involves access management or has potential "takings" or inverse condemnation implications, the Region Director may designate a group of individuals either to advise on the issue or to take over presiding officer duties. If the Region Director designates a group to take over presiding officer duties, he or she shall appoint:

(a) an odd-numbered group so that any decision will not result in a tie; and

(b) a chairperson.

(4) The person who issued the agency order to be reviewed may not be included in either of the groups established in paragraph (3). However, the person who issued the decision may be consulted, asked for the reasons underlying his decision, and called as a witness if the proceeding is converted to a formal one.

(5) Absent filing of a timely Request for Agency Review, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Request for Agency Action will be dismissed. The department shall either mail a copy of the default order and the dismissal order to the person who requested the action.

(6) If the defaulting party is not the sole requester, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(7) A defaulting party may seek agency review of an Order of Default by sending a request for agency review to the presiding officer. If the Order of Default was issued by that officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-4. Agency Review -- Procedures.

(1) Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, except as otherwise provided by law.

(2)Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs, to the person required to decide on review. The person deciding on review may grant either party an extension of time. The decision should be made on the record appearing after the responses have been submitted, but the person required to decide on review may meet with the parties, if he or she considers it necessary. This meeting is not a hearing as contemplated under Title 63G, Chapter 4 Utah Administrative Procedures Act.

(3)The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.

R907-1-5. Reconsideration.

(1) Within 20 days after issuance of the final order, any party may request reconsideration, stating the specific grounds upon which relief is requested.

(2) The person filing the request shall mail a copy to each party.

(3) The Executive Director, or his designee, shall issue a written order either denying or granting the request. If no order is issued within 20 days, the request shall be considered denied. If the request is granted in any part and a new final order is issued, it shall include the same information listed in R907-1-4, or R907-1-6 if the matter concerned motor carriers.

R907-1-6. Administrative Procedures for Motor Carrier Actions.

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, he or she shall follow the procedures established in R907-1. This proceeding is an informal adjudicative proceeding under Section 63G-4-402, Utah Administrative Procedures Act; therefore, discovery is prohibited, but the administrative hearing officer may issue subpoenas or other orders to compel production of necessary evidence. The department shall provide the applicant, upon request, information in the agency's files, including records that are part of any investigation unless those records are otherwise made confidential or protected from disclosure.

(2) If the proceeding is converted to a formal adjudicative proceeding and an evidentiary hearing held, the department's Executive Director may act as the administrative hearing officer. At the hearing, the motor carrier shall go first and is burdened to show why the department's civil penalties should not be assessed. The division shall respond, with the motor carrier being given an opportunity to rebut the division's evidence. If the administrative hearing officer decides doing so will be beneficial to his understanding of the issues, he may allow closing statements or arguments and he may tape the proceedings. The rules of evidence do not apply.

(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.

R907-1-7. Formal Process and Hearing: Initiation.

(1) If, notwithstanding R907-1-1, the department wishes to initiate an adjudicative proceeding as a formal proceeding,

the formal hearing process shall be conducted as follows:

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;

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

(f) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(g) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(h) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;

(i) a statement that the adjudicative proceeding is to be conducted formally according to the provisions of these Rules and Sections 63G-4-204 to 63G-4-209;

(j) a statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action; and

(k) a statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature and the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by sending a written request to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.

R907-1-8. Formal Process and Hearing: Responses.

(1) In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or a representative within 30 days of the mailing date of the Notice of Agency Action that shall include:

(a) UDOT's file number or other reference number;

(b) the name of the adjudicative proceeding;

(c) a statement of the relief that the respondent seeks;

(d) a statement of the facts; and

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

(2) The response shall be filed with UDOT and one copy shall be sent by mail to each party.

(3) All papers permitted or required to be filed under these rules shall be filed with UDOT and one copy shall be sent by mail to each party.

(4) In the discretion of the Presiding Officer Director, any respondent may be heard without written pleadings or an order of default may be entered pursuant to the Rules below.

R907-1-9. Formal Process and Hearing: Intervention.

(1) Order Granting Leave to Intervene Required. Any person, not a party, desiring to intervene in a formal proceeding shall obtain an order from the presiding officer granting leave to intervene before being allowed to participate. Such order shall be requested by means of a signed, written petition to intervene which shall be filed with UDOT by the time a response is due as prescribed in R907-1-8 and a copy promptly mailed to each party. Any petition to intervene or materials filed after the date a response is due, may be considered by the presiding officer only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interest are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the presiding officer.

(3) Response to Petition. Any party to a proceeding in which intervention is sought may make an oral or written response to the petition for intervention. Such response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(4) Granting of Petition. The presiding officer shall grant a petition for intervention if he or she determines that:

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

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

(5) Order Requirements.

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

(b) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

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

(d) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation therein, the presiding officer may dismiss the intervenors from the proceeding.

(e) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and

argue motions and objections.

R907-1-10. Formal Process and Hearing: Conduct of Hearings.

All hearings before the Presiding Officer Director shall be governed by the following procedures:

(1) Public Hearings. All hearings shall be open to the public, unless otherwise ordered by the Presiding Officer Director for good cause shown. All hearings shall be open to all parties

(2) Full Disclosure. The Presiding Officer Director shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Director shall use as appropriate guides, the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objection of a party, the Director:

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

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

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

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

(4) Hearsay. Notwithstanding subsection C. above, the Director may not exclude evidence solely because it is hearsay.

(5) Parties Rights. The Director shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

(6) Public Participation. The Director may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(7) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(8) Failure to Appear. When a party to a proceeding fails to appear at a hearing after due notice has been given, the Director may enter an order of default in accordance with this rule.

(9) Time Limits. The Director may set reasonable time limits for the participants of the hearing.

(10) Continuances of the Hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the fault of the party requesting the continuance. The continuance of the hearing may also be made by the request of the Director when in the public interest.

(11) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the Director may, at his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the Director.

(12) Record of Hearing. The Director shall cause an official record of the hearing to be made, at the agency's expense.

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

(b) The record of the proceedings may also be made by means of a tape recorder or other recording device if the Director determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter. Any party, at its own expense, may have a person approved by the Director prepare a transcript of the hearing, subject to any restrictions that the Director is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be made available at the appropriate UDOT office for use, but may not be taken out of the office. If the party agrees to pay the costs, the department will make a copy to give to them.

(13) Preserving Integrity. This section does not preclude the Director from taking appropriate measures necessary to preserve the integrity of the hearing.

(14) Summons, Witness Fees and Discovery. The Director may allow appropriate witness fees as provided by statute or rule.

(a) Summons. The Director may issue a summons or subpoena on its own motion, or upon request of a party, shall issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

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

(c) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by law.

R907-1-11. Formal Process and Hearing: Decisions and Orders.

(1) Decision. The Director shall sign and issue an order that includes:

(a) a statement of the Director's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or on facts officially noted;

(b) a statement of the reasons for the Director's decision;

(c) a statement of any relief ordered;

(d) a notice of the right to apply for reconsideration;

(e) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(f) The time limits applicable to any reconsideration or review.

(2) Preparation of Order. The Director may direct the prevailing party to prepare proposed findings of fact, conclusions of law and an order consistent with the requirements of this rule, which shall be completed within ten days of the direction, unless otherwise instructed by the Director. Copies of the proposed findings of fact, conclusions of law and order shall be served by the prevailing party upon all parties of record prior to being presented by the Director for signature. Notice of objection thereto shall be submitted to the Director and all parties of record within ten days of service.

(3) Entry of Order. The Director shall sign the order and cause the same to be entered and indexed in books kept for that purpose. The order shall be effective on the date of issuance, unless otherwise provided in the order. Upon the

petition of a person subject to the order and for good cause shown, the Director may extend the time for compliance fixed in its order.

(4) Evaluation of Evidence. The Director may use his expertise, technical competence, and specialized knowledge to evaluate the evidence.

(5) Hearsay. No finding of fact that was contested may be based solely on hearsay evidence.

(6) Interim Orders. This section does not preclude the Director from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(7) Notice. The Director shall notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law shall be delivered or mailed to each party.

R907-1-12. Formal Process and Hearing: Reconsideration and Modification of Existing Orders.

(1) Time for Filing. Within 20 days after the date that a final order is issued in the formal adjudicative process, any party may file a written request for reconsideration or rehearing, stating the specific grounds upon which relief is requested.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) Mailing Requirement. The request for reconsideration shall be filed with the Director. One copy shall be sent by mail to each party by the person making the request.

(4) Contents of Petition. A petition for reconsideration shall set forth specifically the particulars in which it is claimed the Director's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Director failed to consider certain evidence, it shall include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

(5) Response to Petition. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition no later than ten days from the filing of the petition. A copy of such responses shall be mailed to the petitioner by the person so responding on the date the response is filed.

(6) Action on the Petition. The Director is authorized to act upon the petition for reconsideration. If the Director does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied. The Director may, by written order, set a time for hearing on said petition or deny the petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Director shall be treated as a new Request for Agency Action for the purposes of this rule. Such request for modification or amendment shall include as directly affected persons all parties to the previous adjudicative proceeding and their successors in interest.

R907-1-13. Declaratory Rulings.

(1) Petition for Declaratory Orders. Any person may petition the Director for a declaratory order on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code within the jurisdiction of UDOT, which relate to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved.

(2) Not Subject to Declaratory Rulings. The Director shall not issue a declaratory ruling if:

(a) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) there would be substantial prejudice to 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.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of R907-1-9.

(4) Forms of Rulings. After receipt of a petition for a declaratory order, the Director may issue a written order:

(a) declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or

(b) decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order shall contain:

(a) the names of all parties to the proceeding on which it is based;

(b) the particular facts on which it is based; and

(c) the reasons for its conclusion.

(6) Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the petitioner and the Director agree in writing to an extension, if the Director has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R907-1-14. Emergency Orders.

Emergency orders will be issued in accordance with the following guidelines: notwithstanding the other provisions of these Rules, the Director or any member of the Transportation Commission is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Transportation Commission, or such shorter period of time as shall be prescribed by statute.

(1) Prerequisites for Emergency Order. The following must exist to allow an emergency order:

(a) the facts known to the Director or Commission member or presented to the Director or Commission member show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) the threat requires immediate action by the Director of Commission member.

(2) Limitations. In issuing its Emergency Order, the Director or Commission member shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Director or Commission member's utilization of emergency adjudicative

proceedings;

(c) give immediate notice to the persons who are required to comply with the order; and

(d) if the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Director shall commence a formal adjudicative proceeding before the Director in accordance with R907-1.

R907-1-15. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, prior to seeking judicial review.

(2) In any adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.

R907-1-16. Deadline for Judicial Review.

A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63G, Chapter 4.

R907-1-17. Judicial Review of Formal Adjudicative Proceedings.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63G-4-403.

R907-1-18. Civil Enforcement.

(1) Agency Action. In addition to other remedies provided by law and other Rules of the Transportation Commission or UDOT, the Commission or UDOT may seek enforcement of an order by seeking civil enforcement in the district courts.

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

(b) Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

(c) The action may request, and the court may grant, any of the following:

(i) declaratory relief;

(ii) temporary or permanent injunctive relief;

(iii) any other civil remedy provided by law; or

(iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

(a) until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or UDOT, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(b) if the Commission or UDOT has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

(c) if a petition for judicial review of the same order has been filed and is pending in court.

R907-1-19. Waivers.

Notwithstanding any other provision of this rule, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to UDOT. This waiver provision may not be construed to prohibit a finding of default as defined in this rule.

R907-1-20. Construction.

The Utah Administrative Procedures Act described in Title 63G, Chapter 4 or any other federal, state statute, or federal regulation shall supersede any conflicting provision of this rule. It is the department's intent that, where possible, the provisions of this rule be construed to be in compliance with those superseding provisions.

KEY: administrative procedures, enforcement (administrative)
December 9, 2013 63G-4-101 through 502
Notice of Continuation August 3, 2016 72-1-102

R907. Transportation, Administration.
R907-63. Structure Repair and Loss Recovery Procedure.
R907-63-1. Authority and Purpose.

This rule establishes a procedure for loss recovery for damages to structures, appurtenances, thereto and the roadway as provided in Section 72-7-301.

R907-63-2. Procedure to Collect for Damage to Structures and Highways.

(1) Upon notification of damage to the Department's property, the Department shall repair or replace damaged structures and highway elements.

(2) All costs associated with the repair or replacement of the damaged property shall then be invoiced to the owner of the vehicle causing the damage, or to the person directly responsible for the damage.

(3) If the damage is caused by a vehicle, the person responsible shall reimburse the Department for the full cost of repairing the damage.

(4) If payment is not received by the Department within 60 days of the date of the invoice, the Department may pursue payment by one of the following means:

(a) UDOT may pursue collection of a delinquent account in accordance with Sections 63A-3-301 through 63A-3-310, Accounts Receivable Collection.

(b) The account may be tendered to a collection agency for immediate collection.

(5) In cases where undue financial pressure would be caused by full payment of an invoice, the owner of the vehicle or person responsible for the damage may arrange to make installment payments on the debt.

R907-63-3. Eligible Region Recovery Costs.

The appropriate Region may seek recovery of all costs associated with an incident, including traffic control, maintenance and repair when such work is performed by Region work forces to maintain the integrity of the highway system, structure, or to restore the damaged system and facilities to their preexisting condition.

R907-63-4. Eligible Division Recovery Costs.

When damage occurs to a bridge structure:

(1) The Structures Division shall accumulate all costs for preparing design calculations, design plans, specifications and engineering estimates, including professional engineering services and construction engineering with associated overhead costs, along with all costs related to publication, preparation, and advertising the bid package.

(2) The Structures Division shall award the project to the lowest responsive and responsible bidder. The Structures Division shall submit the final accumulated project costs, including all eligible Region charges to UDOT Risk Management for the cost recovery process.

R907-63-5. Department Settlement Policy.

(1) The Department's intent is to secure full recovery from the responsible party(s) based on the full actual cost of such repairs to the structure or highway system damaged including all indirect costs associated with or resulting from an occurrence.

(2) The Department may at its discretion elect to accept settlement based on detailed engineering estimates and any direct or indirect costs associated with or resulting from an occurrence when the Department determines that it is in the best interest of the motoring public and tax payers to delay or forgo repairs to the damaged structures or highway system.

(3) Settlements shall conform to the requirements of the State Settlement Agreements Act, Sections 63G-10-101 through 503.

(4) The Department may submit to the Attorney General any claim for recovery, which is in dispute, requesting legal action be taken to recover the State's losses and settle such claims based on the laws of liability or as directed by the courts.

KEY: bridges, damages, loss recovery, structures

August 23, 2016	**72-7-301**
Notice of Continuation September 1, 2016	**63A-3-301 through 63A-3-310**

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Authority and Purpose.

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

R909-1-2. Adoption of Federal Regulations.

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 387 through 399, and Part 40,(October 1, 2014), as amended by the Federal Register through April 23, 2015 are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of $750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have $1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

R909-1-4. Implements of Husbandry.

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

R909-1-5. Cease and Desist Order - Registration Sanctions.

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

R909-1-6. Penalties and Fines.

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections 72-9-701 and 72-9-703.

R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

KEY: trucks, transportation safety, implements of husbandry

August 24, 2015	**72-9-103**
Notice of Continuation August 30, 2016	**72-9-104**
	72-9-101
	72-9-301
	72-9-303
	72-9-701
	72-9-703

R909. Transportation, Motor Carrier.
R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.
R909-75-1. Purpose and Authority.

The purpose of this rule is to adopt regulations that are applicable to the offering, acceptance and transportation of hazardous materials related to the operation of a motor carrier within the State of Utah. This rule is authorized by Sections 72-9-103, 72-9-104 and 72-9-301.

R909-75-2. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, Parts 107, 171, 172, 173, 177, 178, 179, and 180 (October 1, 2012), as amended by the Federal Register through April 17, 2013 are incorporated by reference. These changes apply to all private, common, and contract carriers by highway in commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulations
September 23, 2013 **72-9-103**
Notice of Continuation August 30, 2016 **72-9-104**
72-9-301

R916. Transportation, Operations, Construction.
R916-2. Prequalification of Contractors.
R916-2-1. Authority and Purpose.

This rule establishes procedures for prequalifying contractors desiring to submit bids and proposals for Utah Department of Transportation construction projects. This rule is authorized under Utah Code Ann. Sections 72-1-201 and 63G-6a-106(3)(a).

R916-2-2. Definitions.

(1) Terms used in this rule are defined in Section 72-1-102.

(2) "Board" means the prequalification board, consisting of 4 positions: Department of Transportation Comptroller, Director of Construction and Materials, an engineer for construction, and the Prequalification Specialist, or designees.

(3) "Applicant" means any person who submits an application for prequalification.

R916-2-3. Prequalification.

(1) Contractors desiring to submit bids or proposals for construction contracts shall be prequalified by the Department to ensure they have the resources and capability to successfully complete awarded contracts. Prequalification is not required for projects that have an advertised estimate of $3,000,000 or under.

(a) Prequalification information is due at least 10 calendar days before submitting a proposal or bid on projects of more than $3,000,000.

(b) The Department may change an Applicant's prequalification status at any time if the Department receives favorable or unfavorable information about the Applicant's job or financial performance.

(c) The prequalification amount limits the size of individual contracts and type of work for which a prequalified contractor may submit proposals or bids.

(2) Qualification ratings establish the type of construction work contractors may be permitted to perform and the maximum dollar value of contracts they are allowed to undertake at any one time.

(3) Applicants who attain a total prequalification of $50,000,000 shall be classified as unlimited. Each Applicant's prequalification shall be reviewed at least annually; more often if circumstances so warrant as determined by the Department.

(4) Qualification ratings shall be based on evaluation of the Applicant's:

(a) experience;

(b) past performance;

(c) personnel; and

(d) analysis of certified audited financial statements, including balance sheet, income statements, equipment and changes in financial condition.

(e) reviewed financial statements for the same time period may be accepted in lieu of the required certified audited financial statements, however, providing these documents shall result in a lower prequalification rating of one-half of the financial factor allowed under the usual procedure.

(5) An applicant may submit a guaranty of financial support provided by an affiliated but independent entity. The Department shall provide a guarantee form for this purpose. Applicants must submit the Department's guarantee form with their applications. The guarantee may increase an applicant's adjusted equity by a maximum of 50% of the applicant's calculated adjusted equity in the formula.

(6) The applicant shall only provide the experience and past performance of the applicant, and must submit financial documents that accurately represent the past financial performance and present financial condition of the applicant.

(7) The Department may reject an application and not pre-qualify an Applicant if the Applicant:

(a) fails to provide all requested information;

(b) provides false, misleading, or incorrect information;

(c) has now or in the past had an officer, member or owner who was convicted of a felony;

(d) is now or has been suspended or debarred by any governmental entity;

(e) has failed to complete a construction contract as the prime contractor;

(f) has been convicted or held liable for any crime or civil offense that involved collusive or deceptive activity related to a procurement process; or

(g) otherwise fails to meet the Department's requirements.

(8) This rule shall be administered to ensure that Applicants possess adequate financial resources to provide complete performance of contracts awarded to them by the Department, and to foster and protect competition in the Department's bidding processes.

(9) The Department will not accept any pledges.

R916-2-4 Joint Venture.

(1) Joint ventures must submit a letter of intent to the Department's Prequalification Board Specialist that states the exact name of the joint venture and identifies the joint venture's designated administrative partner before submitting a joint proposal on a project. Joint ventures must submit their joint proposals at least four working days before the scheduled bid opening. The Department will consolidate individual prequalification amounts for joint venture bids or proposals.

(2) Applicants shall obtain the following under the joint venture designation before bid openings:

(a) Bid bond; and

(b) UDOT Contractor identification and password.

R916-2-5. Prequalification Board.

(1) The Prequalification board is established to:

(a) direct the prequalification of contractors;

(b) review and analyze prequalification applications; and

(c) establish the amount and type of prequalification to be granted to contractors.

KEY: bids, contracts, prequalification
December 8, 2014 **72-1-102**
Notice of Continuation August 3, 2016 **72-1-201**
63G-6a-106(3)(a)

R916. Transportation, Operations, Construction.
R916-3. Design-Build Contracts.
R916-3-1. Purpose.

(1) This rule is to provide guidance under which the Utah Department of Transportation (UDOT) may use the Design-Build approach to contracting pursuant to Section 63G-6a-1402(3)(a). Design-Build seeks to provide a project delivery method which may result in: a savings of time, cost, and administrative burden; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses and improved coordination of efforts.

R916-3-2. Authority.

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Subsection 63G-6a-1402(3)(a), Title 63G, Chapter 3; and Sections 72-1-201 and 72-2-206 of the Utah Transportation Code.

R916-3-3. Policy.

(1) UDOT may use, where determined appropriate by the Executive Director, or designee, the Design-Build method of project delivery. When Design-Build is used, UDOT shall enter into a contract with a single entity to provide both engineering/design services, construction services, and/or maintenance services pursuant to a UDOT provided scope of work statement. Design-Build is not recommended for every project. The use of the Design-Build method may be determined by the individual needs and merits of the project.

R916-3-4. Pre-qualification.

(1) UDOT may issue a Request for Qualifications (RFQ,) soliciting qualification statements from contractors wishing to submit proposals on a UDOT Design-Build project. The RFQ shall state the minimum and maximum number of highly qualified proposers that will be invited to submit final proposals.

(2) Pre-qualification shall be based on an evaluation of the criteria set forth in the RFQ, including construction experience; design experience; technical competence; capability to perform, including financial, manpower and equipment resources; experience in other Design-Build projects; and past performance.

(3) The field of competing proposers shall be narrowed to the most qualified proposers, not to exceed the number designated in the RFQ. Failure to achieve at least two qualified proposers shall necessitate re-soliciting the project.

R916-3-5. Preparation of Specifications.

(1) UDOT may use any method of specifying construction items the Executive Director determines to be in the best interest of UDOT. Engineering firms who participate in the preparation of specifications or other information used in a procurement may not participate as proposers on such projects if a conflict of interest exists as determined by UDOT.

R916-3-6. Request for Proposals (RFP).

(1) Pre-qualified proposers shall be invited to submit proposals on designated Design-Build project pursuant to an RFP. UDOT may elect to ask for initial proposals followed by discussions and may request best and final offers, or may elect to award the contract without discussions or requesting best and final offers. The RFP may ask for proposals based on a predetermined sum.

(2) UDOT may award a predetermined fee to the proposers who submit responsive proposals but who are not selected for contract award. The amount of the fee (if any) shall be identified in the RFP.

(3) The RFP shall require separate technical and price proposals, meeting requirements as stated in the RFP. The RFP may require proposals to meet a mandatory technical level, and may include a provision for submitting alternative technical concepts.

(4) Technical solutions/design concepts contained in proposals shall be considered proprietary information unless a predetermined fee is accepted.

R916-3-7. Evaluation of Proposals and Discussions with Proposers.

(1) UDOT shall evaluate the technical and price proposals separately, in accordance with the evaluation criteria set forth in the RFP.

(2) UDOT may offer the proposers the opportunity to participate in presentations and/or discussions regarding their proposals. Discussions, either oral or in writing, may be held with proposers for the purpose of clarification of the proposals and/or to identify deficiencies in initial proposals. If presentations or discussions are held with one proposer, they must be held with all pre-qualified proposers.

(3) If discussions are held, best and final offers will be requested. If best and final offers are requested they will be the basis for award and will be evaluated as stated in the RFP.

(4) UDOT may follow any of the criteria included in 23 CFR 636 Subpart E when conducting discussions with proposers, which is incorporated as part of this Rule R916-3-7.

R916-3-8. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director, or designee, shall have authority to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Part 11 of the Utah Procurement Code to be unnecessary to protect the State.

(2) The Executive Director, or designee, shall have authority to reduce the amount of the payment and performance bonds below the 100% level required by Part 11 of the Utah Procurement Code if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-3-9. Required Contract Clauses.

The Design-Build contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-60, subject to such modifications as the Executive Director deems advisable. Any modifications shall be supported by a written determination of the Executive Director that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-3-10. Award and Contract.

(1) The basis for award shall be stated in the RFP. Award may be based on any of the following approaches, all of which shall be deemed to constitute award to the responsive and responsible offeror whose proposal is most advantageous to UDOT as such terms are used in Utah Code Section 63G-6a-1402:

(a) Award to the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level.

(b) Award to the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

(c) If the RFP provides for a stipulated sum, award to

the responsible proposer whose proposal is evaluated as providing the best value to UDOT.

(2) There is no requirement that a contract be awarded. Following award, a contract shall be executed and notice given to the successful Design-Build proposer to proceed with the work.

KEY: construction, contracts, highways
March 27, 2015 63G-6a-1402
Notice of Continuation August 3, 2016

R920. Transportation, Operations, Traffic and Safety.
R920-50. Ropeway Operation Safety.
R920-50-1. Purpose.

This rule establishes regulations, requirements, and provides standards for the design, construction, and operation of a passenger ropeway, except private residence passenger ropeways as defined in Section 72-11-102(11), and establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee (Committee). Previously the Committee was known as the Utah Passenger Tramway Safety Committee. The Committee has also been referred to as the Tramway Board.

R920-50-2. Authority.

This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway Systems Act.

R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector.

(2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4.1 means a Ropeway Inspector.

(3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4.1 means a Ropeway Inspector.

(7) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(8) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(9) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers in excess of one calendar year.

(10) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

(11) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

(12) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

(13) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(14) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(15) "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

(16) "Passenger" means any person riding a ropeway, other than "operating personnel."

(17) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether or not the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in ANSI B77.1 Section X.2.3.1 or ANSI B77.2 Section 2.2.1.7.2;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section 3.4.1.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;
(ii) Bullwheel;
(iii) Brake System;
(iv) Tower Structure;
(v) Sheave, Axle, or Sheave Assembly;
(vi) Carrier; and
(vii) Grip.

(18) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(19) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(20) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(21) "Qualified personnel" as used in ANSI B77.1 sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer.

(22) "Relocated ropeway" means any passenger ropeway moved to a new location.

(23) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(24) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(25) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(26) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4.1, means a Ropeway Inspector.

(27) "Tow specialist" as used in ANSI B77.1 section 6.3.4.1 means a Ropeway Inspector.

R920-50-4. General Requirements for Passenger Ropeways.

(1) Passenger ropeways operating in the State of Utah

shall be registered annually with the Committee, and no passenger ropeway shall be operated for passengers without a valid certificate of registration.

(2) Ropeways require a qualified engineer to certify the design, manufacturing, and construction of the ropeway. A Qualified Engineer or Land Surveyor is required to complete the "as-built" profile and certification.

(3) Existing ropeways, when removed and reinstalled, shall be classified as new installations.

(4) Ropeway operators shall be covered by a liability insurance of a minimum of $300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the policy.

R920-50-5. Application to Register a Passenger Ropeway.

(1) Each year prior to operating a passenger ropeway the ropeway operator shall apply to the Committee, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

(2) Term - Passenger ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

(3) Application for Certificate of Registration for existing ropeways shall include the following:

(a) Annual General Inspection Report;

(b) Annual registration fee;

(c) Approved request for exception, if applicable;

(d) Certification of Compliance; and

(e) Certificate of Insurance.

(4) Application for Certificate of Registration for new ropeways shall include the following:

(a) Annual registration fee;

(b) Approved request for exception, if applicable;

(c) Certification of Compliance;

(d) Certificate of Insurance;

(e) Certifications required in R920-50-6;

(f) Documents required in R920-50-7; and

(g) Preoperational Inspection Report.

(5) Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in such form as the Committee shall designate and in accordance with requirements of these rules. Applications shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Traffic and Safety Division
4501 South 2700 West
Salt Lake City, Utah 84119

R920-50-6. Certifications Required for Ropeways.

(1) The Certifications listed below must include the following information:

(a) Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;

(b) Designated certifying statement;

(c) A certification of design, and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and

(d) A certification of "as-built" profile must also include the name, address, seal, and Utah license of the qualified engineer or land surveyor making the certification.

(2) A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for the Ropeway.

(a) The certification shall be signed and dated by the ropeway owner or area operator.

(b) The certification shall include the following statement: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted.

(a) The Qualified Engineer in responsible charge of the design shall certify to the Committee that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operation Safety Rule.

(b) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operation Safety Rule."

(d) This statement shall be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet shall be sealed by the qualified engineer.

(e) The drawings and specifications shall include the quality assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

(4) A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(5) A Certification of "as-built" profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in the State of Utah.

(a) The "as-built" profile must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-7. Documents Required for Ropeways.

(1) A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Test.

(2) A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before acceptance testing begins. The qualified engineer determines the acceptance test requirements.

(3) The owner or area operator shall notify the Committee in writing before the acceptance test that the continuous operation requirements of ANSI B77.1 section X.1.1.11 or ANSI B77.2 section 2.1.1.11.2 have been completed.

(4) A final acceptance test report must be submitted to the Committee prior to opening the lift to the public. The qualified engineer shall approve any changes to the acceptance test procedure.

(5) "As-built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test is finished. Any variation from the design drawings shall be noted in the as-built drawings and approved by the Qualified Design Engineer.

(6) The area operator shall send a "letter of intent" to the Committee at least 45 days prior to beginning the construction of a new lift. The letter of intent must include the name of the qualified engineer, the design standard, the anticipated dates to begin and complete construction, and the available lift manufacturing data.

R920-50-8. Certificate of Registration.

(1) If the application for Certificate of Registration and supporting documentation attest that the ropeway complies with the Governing Standard and this rule, the Committee, if satisfied with the facts stated in the application, shall issue a Certificate of Registration to the operator.

(2) Identification number - For each ropeway, upon receipt of the first application for a Certificate of Registration, the Committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the Committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

R920-50-9. Governing Standards.

(1) The governing standards in Utah include "ANSI B-77.1, 2011" and "ANSI B77.2, 2014" as modified by rule of the Committee. Use of these standards is authorized by Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-11 "Applicable Provisions."

R920-50-10. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in R920-50-11 "Applicable Provisions."

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways shall comply with the new or revised requirements of the Governing Standard and with these rules at the time of the acceptance test.

(2) "Auxiliary drives." Installations shall meet the requirements for auxiliary drives, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations shall meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations shall meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations shall meet the requirements for friction type brakes, as set forth in ANSI B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Fire detection." All machine rooms that are in an enclosed structure located adjacent to the rope of the tramway (vaulted) shall have a fire detection system installed in accordance with the National Fire Alarm Code. This system shall initiate a visual and audible alarm monitored at the drive terminal operator station.

(7) "Grips, clips, and carrier testing." Testing shall be completed according to section ANSI B77.1 sections 2.3.4.3, 3.3.4.3, 4.3.4.3, and ANSI B77.2 section 2.3.4.4 except as modified by this rule.

(a) Testing personnel shall be qualified in accordance with American Society for Nondestructive Testing (ASNT) Recommended Practice No. SNT-TC-1A-1992. Testing agency shall provide certification of qualification of personnel performing testing.

(b) Testing agency inspector shall certify to the owner or area operator that the passenger ropeway components tested were non-destructively tested in accordance with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(c) Sampling size and method of obtaining the sample shall comply with the Governing Standard or the manufacturer's requirement, which ever is more stringent.

(d) Rejection rate and retest procedures shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(e) Types of inspections to be performed and the procedures to be used shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(f) Criteria for acceptance/rejection of samples shall comply with current acceptance criteria established by the designer or manufacturer, or in case the designer or manufacturer is no longer in business, by a Qualified Engineer.

(8) "Wire rope inspection." Inspections shall be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 3.4.1 and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

(9) "Operation and maintenance." All installations shall comply with the Operation and Maintenance requirements of the Governing Standard. These requirements are stated in ANSI B77.1, 2.3, 3.3, 4.3, 5.3, 6.3, 7.3, and ANSI B77.2 2.3.

(10) "Audible warning devices." Requirements for audible warning devices.

(a) Installations shall meet the requirements for audible warning devices as specified by ANSI B77.1, 2.2.10, 3.2.10.

(b) ANSI B77.1 Section 4.2.10 is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

(11) "Conveyor Standards."

(a) Loading and unloading area requirements of ANSI B77.1 section 7.1.1.9 shall also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 section 7.1.2.1 may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1 section 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

(d) The belt transition entry stop device referred to in

ANSI B77.1 section 7.2.3.3 shall include redundant (double) sensors. Each sensor shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

(12) "Dynamic Testing Logs." Maintenance logs shall include documentation of the dynamic testing.

(13) "Air Space Requirements." ANSI B77.1-2006, 2.1.1.3, 3.1.1.3, 4.1.1.3, 5.1.1.3, and 6.1.1.3 and ANSI B77.2 section 2.1.1.2 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into the air space of the ropeway.

(14) "Portable Ropeways." Portable ropeways shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(15) "Tows Requirements."

(a) The requirements of ANSI B77.1 section 6.2.3.2.b) shall also require the stop gate to extend across the incoming and outgoing rope.

(b) Handle Tows shall have stop gates above and below the rope.

(16) "Existing Installations - Annex F" ANSI B77.1-2011 Section 1.2.4.1 Existing installations is modified by the following: Operation and maintenance is not required to comply with normative Annex F Combustion engine(s) and fuel handling.

R920-50-11. Applicable Provisions.

Installations shall comply with the "Revised and Additional Provisions" of R920-50-10 in the categories listed below, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to all ropeways:

(a) New installations and relocated installations R920-50-10(1);

(b) Fire detection R920-50-10(6); effective November 1, 1995;

(c) Wire rope inspection R920-50-10(8); and

(d) Operation and maintenance R920-50-10(9).

(e) Existing Installations - Annex F R920-50-10(16); effective June 7,2012.

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10); effective November 1, 2001;

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Grips, clips, and carrier testing R920-50-10(7);

(f) Audible warning devices R920-50-10(10);

(g) Dynamic testing logs R920-50-10(12); and

(h) Air space requirements R920-50-10(13); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Grips, clips, and carrier testing R920-50-10(7);

(e) Audible warning devices R920-50-10(10);

(f) Dynamic testing logs R920-50-10(12); and

(g) Air space requirements R920-50-10(13); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995; and

(c) Air space requirements R920-50-10(13); effective November 1, 2006.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(13); effective November 1, 2006;

(d) Tow requirements R920-50-10(15); and

(e) Portable Ropeways R920-50-10(14).

(7) The following provisions apply to a Conveyor:

(a) Conveyor standards R920-50-10(11); and

(b) Portable Ropeways R920-50-10(14).

R920-50-12. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the governing standards and the Ropeway Operation Safety Rule, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception shall be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards shall include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the manner in which the ropeway does not conform to the governing standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in R920-50-12(7), the Committee shall issue a Certification of Registration with an exception if the operator satisfies the requirements stated in R920-50-12(4) and also supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that it's devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in R920-50-3(17) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the governing standards and this rule.

(8) The issuance of a certificate of registration with an annual exception shall not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

R920-50-13. Operation of Ropeways.

(1) Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether or not the ropeway was open to the public at the time of the incident. The operator shall meet the requirements stated in R920-50-14.

(2) When a ropeway is modified the ropeway operator shall notify the Committee, or its appointed representative. The operator shall meet the requirements stated in R920-50-15.

R920-50-14. Incidents.

(1) Reporting of Incidents.

(a) Every passenger ropeway incident, as defined in R920-50-3(18) shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Section 63G-2-305 and are also governed by Section 63G-2-207.

(2) Suspension of Operations. When a passenger ropeway incident, as defined in R920-50-3(17) (a) or (g), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

R920-50-15. Modification of a Ropeway.

(1) The Committee, or its appointed representative shall determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; construction, and As-Built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents shall include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form shall be submitted.

(6) The ropeway shall not resume operating until authorized by the Committee, or its appointed representative.

R920-50-16. Inspections and Testing.

(1) Inspections shall verify that the intent of the design and operational requirements imposed by the Governing Standard and this rule are met. The Committee may order other inspections in accordance with Section 72-11-211. Ropeway inspectors may inspect ropeways at any time during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule acceptance inspection and test as the procedures are received.

(3) Annual General Inspection.

All existing ropeway shall have an annual general inspection.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) The area operator shall notify the Committee, or its appointed representative of the annual general inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections shall occur as required in R920-50-14.

(5) Operational Inspection.

An Operational inspections may be made periodically during each season of use.

(a) A ropeway inspector shall make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(c) The report shall include the name and address of the inspector and the date of the inspection.

(d) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) If the inspection does not take place at the acceptance inspection and testing the area operator shall notify the Committee, or its appointed representative of the inspection. The area operator should give 7-days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

R920-50-17. Ropeway Inspector and Qualified Engineer.

(1) General.

(a) Any person performing inspection services must be a "ropeway inspector" as required by this rule, and any person performing design services must be a "qualified engineer", as required by this rule.

(b) The Committee shall maintain up-to-date lists of qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

(c) Any person desiring to be approved by the Committee as a ropeway inspector or qualified engineer shall submit a written request to the Committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-17(2).

(2) Requirements.

(a) Applicant shall satisfy the Committee that by his or her education, training and experience gained by participation in ropeway inspections or designs as a principal or an assistant to a recognized ropeway inspector or ropeway designer, he or she is qualified to be, respectively, an approved inspector or designer or both.

(b) Applicant shall satisfy the Committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding and working knowledge of the governing standard and this rule.

(c) The Committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

(d) The Committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the Committee to use the services and talents of qualified private engineers wherever possible.

(3) Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

(a) practiced any fraud, misrepresentation, or deceit in applying for approval;

(b) caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

(c) been engaged in acts of unlawful or unprofessional conduct.

R920-50-18. Violations.

The Committee may address violations of this rule pursuant to Sections 72-11-212 and 72-11-213.

R920-50-19. Administrative Procedures.

Appeals from orders issued pursuant to any provision of this rule shall be governed by R907-1.

KEY: transportation safety, tramways, ropeways, tramway permits
August 9, 2016 72-11-201 through 72-11-216
Notice of Continuation April 16, 2012

R926. Transportation, Program Development.
R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes.
R926-14-1. Purpose.

The purpose of this rule is to establish the following:

(1) administration of the Utah Scenic Byway program;

(2) the criteria that a highway shall possess to be considered for designation as a state scenic byway;

(3) the process for nominating a highway to be designated as a state scenic byway;

(4) the process for nominating an existing state scenic byway to be considered for designation as a National Scenic Byway or All-American Road;

(5) the process and criteria for removing the designation of a highway as a scenic byway or segmentation of a portion thereof; and

(6) the requirements for public hearings to be conducted regarding proposed changes to the scenic byway status of corridor, and related notifications.

R926-14-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 52, Chapter 4; Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-14-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4. The following additional terms are defined for this rule:

(1) "All-American Road" means a scenic byway designation made at the national level for state scenic byways that significantly meet criteria for multiple qualities out of the six defined intrinsic qualities.

(2) "America's Byways" means the brand utilized by the National Scenic Byways Program for promotion of the National Scenic Byways and All American Roads.

(3) "Committee" or "State Committee" means the Utah State Scenic Byway Committee as defined in Title 74, Chapter 4 and does not refer to any local scenic byway committee herein defined.

(4) "Corridor management plan" means a written document prepared by the local scenic byway committee in accordance with federal policies that specifies the actions, procedures, controls, operational practices, and administrative strategies necessary to maintain the intrinsic qualities of a scenic byway.

(5) "De-designation" means removing a current state scenic byway designation by the committee from an entire existing scenic byway.

(6) "Department" means the Utah Department of Transportation.

(7) "Designation" means selection of a roadway by the committee as a state scenic byway or selection of an existing state scenic byway by the U.S. Secretary of Transportation as one of America's Byways.

(8) "Federal policies" means those rules outlining the National Scenic Byway Program and that set forth the criteria for designating roadways as National Scenic Byways or All-American Roads, specifically the FHWA Interim Policy.

(9) "Local legislative body" means the elected governing board of a political subdivision, such as a town, city, county, or tribal government.

(10) "GOED" means the Utah Governor's Office of Economic Development.

(11) "Grant" means discretionary funding available on a competitive basis to designated scenic byways from the Federal Highway Administration through the National Scenic Byways Program.

(12) "Intrinsic quality" means scenic, historic, recreational, cultural, archaeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area. The National Scenic Byways Program further defines each of these qualities.

(13) "Local Scenic Byway Committee" means the committee consisting of the local byway coordinator and representatives from nearby local legislative bodies, agencies, tourism related groups and interested individuals that recommends and prioritizes various projects and applications relating to a scenic byway. The local scenic byway committee promotes and preserves intrinsic values along the byway.

(14) "Local Byway Coordinator" means an individual recognized by the local scenic byway committee as chair. If a local scenic byway committee does not exist for a scenic byway, the local byway coordinator is an individual recognized by the state committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(15) "National Scenic Byway" means a scenic byway designation made at the national level for byways that significantly meet criteria for at least one quality out of the six defined intrinsic qualities.

(16) "National Scenic Byways Program" or "NSBP" means a program provided by the Federal Highway Administration to promote the recognition and enjoyment of America's memorable roads.

(17) "State Scenic Byway" means a Utah roadway corridor that has been duly designated by the committee for its intrinsic qualities.

(18) "Status" refers to the current designation of a scenic byway, i.e., state scenic byway, National Scenic Byway, All-American Road, undesignated roadway, segmented scenic byway or de-designated scenic byway.

R926-14-4. Utah State Scenic Byway Committee Organization and Administration.

(1) The authorization of the committee, its membership, administration, powers, and duties are defined in Title 72, Chapter 4.

(2) The committee shall conduct business to administer the State Scenic Byway program within the State of Utah. This business shall include, but not be limited to:

(a) designating, de-designating, hearing appeals of segmentation denials of state scenic byways, and consideration of segmentation under a Request for Agency Action;

(b) recommending considerations for National and All-American Road recognition to the Legislature;

(c) recommending applications to the NSBP;

(d) prioritizing applications for Scenic Byway Discretionary funding and other funding that may be available; and

(e) other business as may be needed to administer the scenic byway program.

(3) The committee shall meet to conduct business necessary to administer the state scenic byway program.

(a) The meeting is intended to be an in-person gathering of the full committee at a single anchor location. Where the need arises, and as authorized by Title 52, Chapter 4, individual members may request to be connected to the meeting via teleconference, video conference, web conference, or other emerging electronic technology, if they make the request at least three days prior to the committee meeting to allow for arrangements to be made for the connection.

(b) All additional meetings called by the chair, including committee meetings to consider factors associated with a Request for Agency Action to segment property

adjacent to a scenic byway, may be held as either in-person or electronic meetings, at the discretion of the chair, as authorized by Title 52, Chapter 4.

(i) Electronic meetings may be fully electronic, i.e. each member may join on an individual remote connection (depending on the technology used), but an anchor location must be provided for the public at one or more connections, preferably at a conference room available to either the department or the Utah Office of Tourism, that is large enough to accommodate anticipated demand.

(ii) Electronic meetings may be via teleconference, video conference, web conference, or other emerging electronic technology, at the discretion of the chair, as long as adequate time is provided to set up the required electronic connections for all participants and the technology used is generally publicly available.

(iii) All meetings, whether in-person or electronic, must be advertised and accessible to the public for both hearing and comment, which in the case of electronic meetings will require publication of connection details and anchor locations.

(iv) The published agenda for electronic meetings needs to include details on the format of how and when public comment will be received and addressed by the committee. For example, comment during a web conference may be taken continuously via a chat window, then read by the moderator during the time set aside for public input, with committee responding. In a teleconference, public participants may be requested to hold their comments until a designated period is opened by the chair.

R926-14-5. Criteria Required of a Highway to Be Considered for Designation as a State Scenic Byway.

(1) A road being considered for state scenic byway designation must meet all of the following criteria:

(a) the nominated road must possess at least two unusual, exceptional, or distinctive intrinsic qualities, as defined;

(b) the nominated road may be either a planned or existing route and in the case of a planned route, legal public access, safety standards and all-weather pavement must be guaranteed at completion of construction;

(c) roadway safety on the nominated road must be evaluated against and guided by American Association of State Highway and Transportation Officials (AASHTO) safety standards for federal aid primary or secondary roads;

(d) the nominated road must have strong local support for byway designation and the proponents must demonstrate this support and coordination;

(e) the nominated road must accommodate recreational vehicles or provisions should be made for travel by recreational vehicles;

(f) the nominated road need not lead to or provide connection to other road networks; it may be dead-ended, or provide only a single outlet for traffic;

(g) the nominated road need not be open during the winter months, but seasonal road closures must be clearly posted, shown on applicable maps, and specified in any promotional literature; and

(h) the nominated road may include portions of the Interstate Highway System, but only if the Interstate component is a small part of the mileage of the overall nominated scenic byway and is included primarily for continuity of travel.

(2) It is the intent of these criteria to be restrictive in nature so as to limit the number of designated state scenic byways in order to maintain the quality and integrity of the scenic byway system.

R926-14-6. Process for Nominating a Highway to Be Designated a State Scenic Byway.

(1) Nominations for a corridor to be designated a state scenic byway shall be forwarded to the committee by a local legislative body.

(2) The nomination application must demonstrate how the nominated road meets the criteria to qualify as a state scenic byway.

(3) The committee will act on a byway-related application only after the responsible organization has held public hearings and submitted minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(4) The committee will consider the nomination after review of the application and after a presentation by the nominating sponsor group, either at the byway location, or at a committee meeting. The committee will vote on proposed designations at the next committee meeting. The committee will report the results of the vote to the nomination sponsor.

(5) Individual communities along the byway corridor that do not support the designation of the byway within the limits of their community have the statutory right, as prescribed in Title 72, Chapter 4, to opt out of any new byway designation through official segmentation action of their local legislative body, but they become ineligible for byway grants and promotional considerations by doing so.

(6) Upon approval by the committee of a scenic byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of the approved alignment and limits of the designated corridor.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(7) On receiving notification of a newly designated state scenic byway, the department shall amend Rule 926-13 to include the description of the byway and the date of its approval. The department shall forward to the NSBP any electronic files needed to describe or display the new byway in online maps, brochures, or other publications of the NSBP. The department will add the scenic byway to the official highway map at its next printing.

R926-14-7. Process for Nominating a Highway to Be Designated a National Scenic Byway or All-American Road.

In addition to state recognition, state scenic byways may be nominated to the National Scenic Byways Program so that they may be recognized as a byway of national significance through designation as a National Scenic Byway or All-American Road.

(1) Local scenic byway committees shall notify the state committee of their intent to apply for National Scenic Byway or All-American Road status and the state committee shall in turn notify the Legislature of this intent.

(2) Local scenic byway committees desiring national designation are required by the National Scenic Byways Program to prepare nomination applications, adhering to the criteria outlined in applicable federal policies.

(a) A corridor management plan for the byway will be required by the NSBP to be prepared before a nomination application will be considered. The required information and criteria to be included in the corridor management plan are outlined in the federal policies.

(b) The NSBP will issue a call for applications, at which time the local scenic byway committee may submit a nomination application as long as the state scenic byway has

been approved for consideration in accordance with the requirements of Title 72, Chapter 4.

(3) Local scenic byway committees are to confer with the state committee during the preparation of a corridor management plan and will submit their nomination applications to the committee for review prior to submitting to the NSBP.

(4) The committee will refer all considerations for America's Byways designations to the Legislature for approval, along with the recommendation of the committee. As required in Title 72, Chapter 4, Legislative approval must be obtained before any application for nomination may be submitted to the NSBP.

(5) Upon approval by the NSBP of a National Scenic Byway nomination, the committee shall notify the Utah Office of Tourism, the department and other interested agencies of the new designation and of any differences in alignment or limits as related to existing state scenic byway designations.

(a) The committee will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(6) On receiving notification of a change in byway status to National Scenic Byway or All-American Road, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes and the date of NSBP approval.

R926-14-8. Process and Criteria for Removing the Designation of a Highway as a Scenic Byway or Segmentation of a Portion Thereof.

(1) The committee may de-designate a scenic byway if the intrinsic values for which the corridor was designated have become significantly degraded and no longer meet the requirements for which it was originally designated.

(2) The local legislative body may remove designation on a localized segment of a designated byway if the intrinsic values within the segment have become degraded or if the segment being considered was included primarily for continuity of travel along the designated corridor, does not in and of itself contain the intrinsic values for which the corridor was designated, and the segmentation has strong community-based support.

(3) Highways that are part of the National Highway System (NHS) are still subject to certain federal outdoor advertising regulations, regardless of their scenic byway status. When considering a de-designation or segmentation on an NHS route, either the committee or the local legislative body should become familiar with the regulatory differences between scenic byway status and NHS status, since de-designation or segmentation would not affect the ongoing applicability of NHS regulations and may not always produce the desired effect.

(4) De-designated corridors and communities or parcels segmented out of the scenic byway designation are no longer subject to byways-related regulations and are no longer eligible for byways-related grants and promotional considerations.

(5) Committee processes for de-designation may be initiated by the committee itself or by request from a local legislative body.

(6) Segmentation of specific parcels or portions of a scenic byway may be considered directly by the local legislative body of a county, city, or town where the segmentation is proposed, as provided in Title 72, Chapter 4. The same public hearing requirements are followed for local legislative actions as are provided herein for committee actions.

(7) Alternately, segmentation of specific parcels of property adjacent to a scenic byway may be requested by the property owner by submitting a written Request for Agency Action, as provided in the Administrative Procedures Act, Title 63G, Chapter 4, Part 2.

(a) The Request for Agency Action shall contain the information required by 63G-4-201(3)(a), and shall include a statement why the owner considers the property to be non-scenic as defined in 72-4-301.

(b) The written Request for Agency Action shall be mailed to the Office of Tourism, Film and Global Branding within the GOED, with a copy of the request mailed to the Program Development Group within the Utah Department of Transportation to the attention of Program Development;

(c) Segmentation of property under a Request for Agency Action shall take effect 60 days after receipt of the written request by the Office of Tourism within GOED, unless the committee demonstrates to an administrative law judge within 60 days, with subsequent action by the administrative law judge, that the property fails to meet the definition of "non-scenic" as defined in 72-4-301;

(i) Pursuant to Section 72-4-303(3)(d), "receipt" of the request for Agency Action shall be the date on which the mailed copy of the request is received by GOED's Office of Tourism.

(ii) Requests for Agency Action shall be mailed to:
GOED OFFICE OF TOURISM
Attention: Scenic Byway Committee
300 North State Street
Council Hall/ Capitol Hill
Salt Lake City Utah 84114

(iii) A copy of the Request for Agency Action shall be mailed to:
Program Development Group of the
Utah Department of Transportation
P.O. Box 143600
4501 South 2700 West
Salt Lake City Utah 84114

(d) a request for agency action segmentation is classified as an informal adjudicative proceeding.

(8) Requests to the committee for de-designation of state scenic byways shall be submitted by a local legislative body along or adjacent to the scenic byway corridor. Each request shall include discussion of the specific reasons for de-designation. Reasons may include, but are not limited to:

(a) segment or corridor is no longer consistent with the state's criteria for selection as a scenic byway;

(b) failure to have maintained or enhanced intrinsic values for which the scenic byway was designated;

(c) degradation of the intrinsic values for which the scenic byway was selected;

(d) segment of byway is not representative of the intrinsic values for which the scenic byway was designated and was included primarily for connectivity; or

(e) state scenic byway designation has become a liability to the corridor.

(9) Local legislative bodies shall inform the committee and UDOT Program Development of their action to segment within 30 days of the date of the action to segment. The local legislative body shall include the discussion of the specific reasons for segmenting. Reasons may include, but are not limited to those identified in R926-14-8(7)(a) through (e).

(10) Parcels on existing byways may not be segmented out of a byway solely for the purpose of evading state and federal regulations pertaining to byway designation, but must also be considered non-scenic or otherwise meet the criteria listed in Paragraph (7). However, towns, cities, and counties may remove themselves entirely for any purpose, as provided in Title 72, Chapter 4.

(11) State and federal highway regulations require that

no regulated outdoor advertising be located within 500 feet of a designated scenic area. Therefore, the size of any parcel or parcels being considered for segmentation would need to be large enough to meet that offset requirement.

(12) Upon receipt of the local legislative body's action to segment, the committee chair will add the action to the agenda of the next committee meeting.

(13) The local legislative body shall provide the committee the following information at the next committee meeting:

(a) the date of segmentation, being the day the local legislative body took action on the request to segment;

(b) the defined limits of the segmented portion of the scenic byway, including route and milepost details and definitions;

(c) the approved meeting minutes from the public meeting(s); and

(d) a copy of the signed resolution from the local legislative body.

(14) After the responsible legislative body has heard and denied a request to segment a state scenic byway, the denial can be appealed to the committee. The appeal must include information regarding the public hearings, minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

(15) Following discussion of the request or appeal, the committee will vote on the request for de-designation or appeal of the denial of segmentation. The committee will then forward the result of the vote to the requesting local legislative body or appealing party. For segmentation denial appeals heard by the committee and for de-designation actions, the date of approval by the committee is considered the official date of the segmentation or de-designation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

(16) Upon approval or disapproval of a de-designation or segmentation request or decision on appeal, the acting body, whether the committee or the local legislative body, shall notify the Utah Office of Tourism, the department and other interested agencies of the action taken.

(a) In the case of approval of a de-designation or segmentation, the acting body will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(b) In the case where the committee approves the de-designation of a scenic byway that had also been designated as a National Scenic Byway, the committee will inform the National Scenic Byway Program of the decision and make a request to the NSBP that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(c) In the case of a local legislative action on a segmentation request, the local legislative body shall also notify the committee and the local byway coordinator of the action taken. For segmentation requests heard by a local legislative body, the date of approval by the local legislative body is considered the official date of the segmentation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

(17) Appeals to the committee concerning local legislative actions are handled as provided in Title 72, Chapter 4.

(18) Upon receiving notification of segmentation or de-designation, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes. The department shall forward to the NSBP any changes that would have a substantive effect on online maps, brochures, or other publications of the NSBP. The department will also show substantive changes on the official highway map at its next printing.

R926-14-9. Local Government Consent.

Consent of affected local governments along the byway corridor is required by Title 72, Chapter 4 for any change in scenic byway status.

R926-14-10. Requirements for Public Hearings to Be Conducted Regarding Changes to Status of a State Scenic Byway and Related Notifications.

(1) Whenever changes to the scenic byway status of a corridor or of a segment thereof are considered, one or more public hearings must be held for the purpose of receiving the public's views and to respond to questions and concerns expressed before action is taken.

(2) Upon the receipt of a Request for Agency Action from a property owner to segment property adjacent to a scenic byway, the Chair of the committee shall call a meeting for the committee to consider factors associated with the request, including consideration of information listed in paragraph (4).

(3) For all other changes to scenic byway status:

(a) The organization initiating the request for change in status is responsible for arrangement, notification, and execution of the hearing(s). The responsible organization may be:

(i) an organization (local scenic byway committee, community, county or association of governments) submitting an application or request to the committee;

(ii) the committee, in the case of a process initiated by the committee itself; or

(iii) a local legislative body considering a segmentation request.

(b) The hearing(s) shall be held in the area affected by the proposed status changes.

(c) Multiple hearings in varied locations may be appropriate, based on the length of the corridor or the affected area within the corridor. The committee chair will review and approve the number and locations of hearings as proposed by the nominating organization to ensure collection of a broad base of public comments throughout the length of the corridor where the scenic byway status changes are proposed.

(d) The responsible organization shall invite the state committee and the local scenic byway committee to attend the public hearing(s).

(2) The required public hearing(s) may be held separately, or as an identifiable agenda item of a regular meeting of a local legislative body.

(3) Notification of all public hearings shall be made as required by the laws governing the responsible organization.

(4) At a minimum, the following information related to the proposed change in status is to be addressed at each public hearing:

(a) the impact on outdoor advertising;

(b) the potential impact of traffic volumes;

(c) the potential impact of land use along the byway;

(d) the potential impact on grant eligibility; and

(e) the potential impact on the local tourist industry.

(5) The responsible organization shall keep minutes of the hearing, including a detailed summary of comments and the names and addresses of those making comments and shall make these available to the committee, along with proof of required notifications.

R926-14-11. Requirements for Consideration of Adjudicative Proceedings Associated with a Segmentation

Request Submitted by a Property Owner Under a Request for Agency Action.

(1) If the committee determines at a public hearing that property associated with a property owner's request for agency action to segment property does not meet the definition of non-scenic as defined in 72-4-301, the Chair of the committee shall notify the property owner that its Request for Agency Action is denied pending administrative hearing.

(2) The Chair of the committee shall notify the property owner in writing of:

(a) The committee's denial of the Request for Agency Action;

(b) the Committee's intent to have the matter considered by an administrative law judge;

(c) A list of available administrative law judges, if known.

(3) No more than 10 days after the written notice is sent advising the property owner of the committee's denial of the request for agency action and intent to have the matter considered by an administrative law judge, the property owner shall notify the committee in writing of their agreement on selection of the administrative law judge named by the committee, or advise the committee of an alternate judge agreed upon by the committee.

(4) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Utah Code Section 63G-4-203.

KEY: transportation, scenic byways, highways

August 23, 2016	**52-4-207**
Notice of Continuation June 16, 2015	**63G-3-201**
	72-4-301
	72-4-301.5
	72-4-302
	72-4-303
	72-4-304

R926. Transportation, Program Development.
R926-15. Designated Scenic Backways.
R926-15-1. Purpose.

(1) The primary purpose of this rule is to identify the specific roadways designated as state scenic backways by the Utah State Scenic Byways Committee in 1990, and any additions or deletions made by that body since then, in order to preserve the historical record of those designations and the general definition of the extents of these backways provided by the committee at the time of designation.

(2) A secondary purpose of this rule is to clarify the jurisdiction and limitations of authority for maintaining the intrinsic qualities, quality of life, and wayfinding signs on scenic backway routes.

R926-15-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-15-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4 and in Rules 926-13-3 and 926-14-3. The following additional term is defined for this rule:

(1) "Scenic backway" is a route that has been designated by the committee in recognition of its intrinsic qualities, as defined for scenic byways, but that does not meet either the width, grade, curvature, paving, or safety criteria necessary to be considered a state scenic byway.

(a) The route must be on a road that is legally accessible to the public.

(b) Preference is given to roads that form a loop or are part of a network of scenic roads or trails.

(c) Travel on a scenic backway route is considered to be reasonably safe, although a certain amount of risk may be involved.

(d) Scenic backways fall into three categories or types, depending on the characteristics of the road. These characteristics are typically outlined in tourist information, but not specified here in the list of designated backways because there may be segments of each type in any given backway.

(i) Type I scenic backways are roads that may be partly paved or have an all-weather surface and grades that are negotiable by a normal touring car. These are usually narrow, slow speed, secondary roads.

(ii) Type II scenic backways are roads that are usually not paved, but may have some type of surfacing. Grades, curves, and road surfaces may be negotiated with a two-wheel-drive, high-clearance vehicle without undue difficulty.

(iii) Type III scenic backways are roads that are usually not surfaced and have grades, tread surface, and other characteristics that require four-wheel-drive or other specialized off-highway vehicles such as dirt bikes or ATVs.

R926-15-4. Jurisdiction Over State Scenic Backways and Limitations of Authority.

(1) The Utah State Scenic Byways Committee has authority to designate and de-designate scenic backways.

(a) The network of scenic backways is already extensive and the committee intends to limit the number of backways in order to maintain the quality and integrity of the scenic backway system. For this reason, the likelihood of new designations is low, but proposals for new backway routes will be considered.

(b) Backway routes that are improved after designation to the point of meeting the criteria required of state scenic byways may be presented to the committee for consideration of a re-designation to scenic byway status.

(2) Scenic backways do not qualify for the National Scenic Byways Program nor are any of them part of the National Highway System. They are not subject to any federal regulations pertaining to designated scenic byways, including outdoor advertising restrictions, and they are not eligible for federal byway grants.

(3) The authority and responsibility for maintaining the intrinsic qualities for which each scenic backway was designated, including the regulation of outdoor advertising, rests with the cities, towns, counties and resource agencies through which the route passes.

(a) Preserving the intrinsic qualities of and quality of life along each backway corridor, as determined locally, is dependant on local zoning and signing ordinances.

(b) Except for routes on state highways, the Utah Department of Transportation holds no oversight authority on backway routes.

(4) Installation and maintenance of scenic backway wayfinding signs is a local responsibility.

(a) The design, size, and installation details of the signs are maintained by the Utah Office of Tourism, in consultation with the Utah Department of Transportation, for continuity across the state and to ensure conformity to the Manual on Uniform Traffic Controls.

(b) Historically, the UDOT Traffic and Safety Division has allowed local agencies and local committees to purchase scenic backway signs from its sign shops and through its outside vendors under its sign contracts, to help provide statewide continuity and to help reduce taxpayer costs through shared volume buying.

R926-13-5. Highways Within the State That Are Designated as State Scenic Backways.

The following roads are designated as state scenic backways (date of designation is April 9, 1990 unless otherwise specified):

(1) Central Pacific Railroad Trail Scenic Backway. Following the abandoned railroad grade from Locomotive Springs (south of Snowville and west of Golden Spike National Monument) through Lucin to the Utah/Nevada State Line.

(2) Silver Island Mountain Loop Scenic Backway. From Danger Cave Archaeological Site near Wendover, around Silver Island Mountain.

(3) Bountiful/Farmington Loop Scenic Backway. Along Skyline Drive from east Bountiful, over Bountiful Peak and down Farmington Canyon, through Farmington to US-89.

(4) Trappers Loop Road Scenic Backway. State Route 167 from Mountain Green through Wasatch-Cache National Forest to Huntsville and the Ogden River Scenic Byway.

(5) Willard Peak Road Scenic Backway. From Mantua through Wasatch-Cache National Forest to Inspiration Point near Willard Peak.

(6) Hardware Ranch Road Scenic Backway. From Hyrum on SR-101 through Hardware Ranch and then north through Wasatch-Cache National Forest and past the Sinks to US-89, ten miles west of Bear Lake on the Logan Canyon National Scenic Byway.

(7) Middle Canyon Road Scenic Backway. From Tooele up Middle Canyon, over Butterfield Peak, and down Butterfield Canyon to Highway 111 (former Lark site).

(8) South Willow Road Scenic Backway. From Mormon Trail Road, five miles south of Grantsville, west to Deseret Peak.

(9) Alpine Scenic Loop. State Route 92 from the mouth of American Fork Canyon through Uinta National Forest and along the back side of Mount Timpanogos to US-189, one mile east of Vivian Park on the Provo Canyon Scenic Byway.

(10) Cascade Springs Scenic Backway. From Alpine Scenic Loop east past Cascade Springs and north to Wasatch Mountain State Park.

(11) Guardsman Pass Road Scenic Backway. From Wasatch Mountain State Park to Park City and Brighton on the Big Cottonwood Canyon Scenic Byway.

(12) Pioneer Memorial Backway. State Route 65 from Henefer past East Canyon State Park to Emigration Canyon Road and Emigration Canyon Road from SR-65 to Hogle Zoo.

(13) North Slope Road Scenic Backway. From Mirror Lake Scenic Byway (SR-150), six miles south of the Utah/Wyoming State Line, east past China Lake and north to Stateline Reservoir.

(14) Broadhead Meadow Road Scenic Backway. Murdock Basin Road from Mirror Lake Scenic Byway (SR-150), 24 miles east of Kamas, to Broadhead Meadow Road, then north past Broadhead Meadow and back to Mirror Lake Highway just south of Upper Provo River Falls.

(15) Red Cloud/Dry Fork Loop Scenic Backway. From US-191, 14 miles north of Vernal on the Flaming Gorge-Uintas National Scenic Byway, west through Ashley National Forest, then south to Dry Fork near Maeser.

(16) Sheep Creek/Spirit Lake Loop Scenic Backway. From SR-44, 15 miles west of the junction of SR-44 and US-191 on the Flaming Gorge-Uintas National Scenic Byway, looping back through Sheep Creek Canyon to SR-44 six miles south of Manila, plus the spur road to Spirit Lake starting about 3 miles west of SR-44.

(17) Jones Hole Road Scenic Backway. From 500 North Street, 4 miles east of Vernal, north and east to Diamond Mountain Plateau and east to Jones Hole at the Utah/Colorado State Line.

(18) Brown's Park Road Scenic Backway. From Jones Hole Road Scenic Backway at Diamond Mountain Plateau, north down Crouse Canyon and through Brown's Park, then west through Jessie Ewing Canyon to US-191, five miles north of Dutch John on the Flaming Gorge-Uintas National Scenic Byway.

(19) Notch Peak Loop Scenic Backway. From US-50, 43 miles west of Delta, north around the House Range Mountains to Dome Canyon Pass and south around the western side of the range back to US-50.

(20) Pony Express Trail Scenic Backway. From Fairfield west through Faust, over Lookout Summit, and past Simpson Springs and Fish Springs to Callao, Clifton, and Ibapah.

(21) Deep Creek Mountains Scenic Backway. From Pony Express Trail Scenic Backway at Callao, south to Trout Creek, plus the side roads into each of the five canyons into the Deep Creek Mountains.

(22) Reservation Ridge Scenic Backway. From US-191 at the Avantaquin Campground turnoff on the Dinosaur Diamond Prehistoric Highway National Scenic Byway, west along the ridge line to US-6, just east of Soldier Summit.

(23) White River/Strawberry Road Scenic Backway. From US-6, just east of Soldier Summit, north to Trail Hollow and north past Strawberry Reservoir to US-40, 23 miles east of Heber.

(24) Nine Mile Canyon Scenic Backway. From US-191, two miles east of Wellington on the Dinosaur Diamond Prehistoric Highway National Scenic Byway, north and east through Nine Mile Canyon to Myton.

(25) Chicken Creek Road Scenic Backway. From Levan to Chester through the Uinta National Forest over the San Pitch Mountains.

(26) Skyline Drive Scenic Backway. From the Tucker Rest Area on US-6 up the left fork of Clear Creek, crossing the Energy Loop National Scenic Byway, and south through the Manti-La Sal and Fishlake National Forests to I-70 at Taylor Flat, 18 miles east of Salina.

(27) Mayfield-Ferron Scenic Backway. From Mayfield to Ferron, crossing Skyline Drive Scenic Backway in the Manti-La Sal National Forest.

(28) Wedge Overlook/Buckhorn Draw Scenic Backway. From Castle Dale on SR-10 to the Wedge Overlook and from the Wedge Overlook turnoff, 13 miles east of SR-10, through Buckhorn Draw to I-70 at Exit 131.

(29) Dinosaur/Cedar Overlook Scenic Backway. From Cleveland south and east to the Cleveland-Lloyd Dinosaur Quarry and from the turnoff, six miles west of the quarry, on south and east to Cedar Mountain.

(30) Temple Mountain/Goblin Valley Road Scenic Backway. From SR-24, 24 miles south of I-70, west to the base of Temple Mountain, then south to Goblin Valley State Park.

(31) Kimberly/Big John Flat Road Scenic Backway. State Route 153 from Junction on US-89 to the east end of the Beaver Canyon Scenic Byway, then from SR-153 north along Big John Flat Road, Beaver Creek Road, and Kimberly Road to I-70 at Castle Rock, plus the Kent's Lake Loop (Forest Road 137).

(32) Cove Mountain Road. From Koosharem on SR-62 through Fishlake National Forest to Glenwood on SR-119.

(33) Cathedral Valley Road Scenic Backway. From SR-24, 1/2 mile west of Caineville on the Capitol Reef Country Scenic Byway, north along Cathedral Valley into the northern part of Capitol Reef National Park, then north to Fremont Junction on I-70.

(34) Thousand Lake Mountain Road Scenic Backway. From SR-72, five miles northeast of Fremont, to Baler Ranch Road which connects to Factory Butte Road and Elkhorn Road, which passes through Capitol Reef National Park and connects to Factory Butte.

(35) Gooseberry/Fremont Road Scenic Backway. From Johnson Valley Reservoir at the Fishlake Scenic Byway, north through Fishlake National Forest to I-70, 6.5 miles east of Salina.

(a) Originally defined as running from SR-72, two miles north of Fremont, to I-70.

(b) The southern segment of this backway, between Fremont and Johnson Valley Reservoir, was redesignated a scenic byway and added to the Fishlake Scenic Byway November 18, 1992.

(36) La Sal Mountain Loop Road Scenic Backway. From US-191, six miles south of Moab, over the La Sal Mountains in the Manti-La Sal National Forest and through Castle Valley to SR-128 and the Dinosaur Diamond Prehistoric Highway National Scenic Byway.

(37) Lockhart Basin Road Scenic Backway. From Moab south through Kane Creek Canyon, Lockhart Basin and alongside Canyonlands National Park to SR-211 and the Indian Creek Corridor Scenic Byway.

(38) Needles/Anticline Overlook Road Scenic Backway. From US-191, 12 miles south of La Sal Junction, north to Anticline Overlook and Needles Overlook.

(39) The Trail of the Ancients Scenic Backway. State Route 261 from SR-95 south to US-163, plus SR-316 from SR-261 to Goosenecks Overlook. Also the roadways running on SR-262 between US-191 and County Road FAS-2416, and on FAS-2416 starting at SR-262 and running southeasterly to County Road FAS-2422, then northeasterly on FAS-2422 to the Utah/Colorado State Line near Hovenweep National Monument.

(a) Originally designated as the Moki Dugway Scenic Backway.

(b) Renamed and extended on February 7, 1994, to also include the route between US-191 and Hovenweep.

(c) Redesignated on September 22, 2005 as part of the Trail of the Ancients National Scenic Byway.

(40) Elk Ridge Road Scenic Backway. From SR-275 near Natural Bridges National Monument, one mile west of the junction of SR-95 on the Trail Of the Ancients National Scenic Byway, north and east through Bears Ears and across Elk Ridge to SR-211 and the Indian Creek Corridor Scenic Byway.

(41) Abajo Loop Scenic Backway. From Monticello west around Abajo Peak and south to Blanding at the northern end of the Trail of the Ancients National Scenic Byway.

(42) Bull Creek Pass Road Scenic Backway. From SR-95, 15 miles south of SR-24 on the Bicentennial Highway Scenic Byway, to McMillan Springs through Steven Narrows and east to SR-276, five miles south of SR-95.

(a) Originally called Bull Mountain Road Scenic Backway.

(43) Notom Road Scenic Backway. From SR-24 at the Capitol Reef National Park boundary on the Capitol Reef Country Scenic Byway, south to the Burr Trail Scenic Backway.

(44) Burr Trail Scenic Backway. From SR-12 at Boulder on the Scenic Byway 12 All-American Road, east and south across the Waterpocket Fold in Capitol Reef National Park to SR-276 near Bullfrog.

(45) Hole in the Rock Scenic Backway. From SR-12, five miles east of Escalante on the Scenic Byway 12 All-American Road, southeast through Grand Staircase-Escalante National Monument and Glen Canyon National Recreation Area to the Hole in the Rock at Lake Powell.

(46) Smoky Mountain Road Scenic Backway. From SR-12 at Escalante on the Scenic Byway 12 All-American Road, south across the Kaiparowits Plateau and through the Grand Staircase-Escalante National Monument to Big Water on US-89.

(47) Posey Lake Road Scenic Backway. From Escalante on the Scenic Byway 12 All-American Road, north through the Dixie National Forest, past Death Hollow Wilderness Area and Posey Lake, to Bicknell on the Capitol Reef Country Scenic Byway.

(48) Griffin Top Road Scenic Backway. From Posey Lake on the Posey Lake Road Scenic Backway west and south through the Dixie National Forest to the historic Widtsoe settlement (Widtsoe Junction).

(49) Cottonwood Canyon Road Scenic Backway. From US-89 at the Paria Ranger Station, north through the Grand Staircase-Escalante National Monument to Cannonville on the Scenic Byway 12 All-American Road.

(50) Johnson Canyon/Alton Amphitheater Scenic Backway. From US-89, eight miles east of Kanab, north and west to Glendale through the Grand Staircase National Monument and the Vermillion Cliffs, White Cliffs, and Pink Cliffs. Also a spur route from 8 miles east of Glendale, north to Alton.

(51) Paria River Valley Scenic Backway. From US-89, at the Spur, 40 miles east of Kanab, north to the Paria ghost town and movie set.

(52) East Fork of the Sevier Scenic Backway. From SR-12, 14 miles east of the US-89 junction on the Scenic Byway 12 All-American Road, south through the Dixie National Forest and parallel to the west boundary of Bryce Canyon National Park, to the southern terminus at the clifftop.

(53) Ponderosa/Coral Pink Sand Dunes Scenic Backway. From US-89, seven miles northwest of Kanab, southwest past Ponderosa Campground to Coral Pink Sand Dunes State Park.

(54) Smithsonian Butte Scenic Backway. From SR-9 at Rockville on the Zion Park Scenic Byway, south to US-89 at Apple Valley.

(55) Kolob Reservoir Road Scenic Backway. From SR-9 at Virgin on the Zion Park Scenic Byway, through Zion National Park to SR-14, six miles east of Cedar City on the Cedar Breaks Scenic Byway.

(56) Dry Lakes/Summit Canyon Scenic Backway. From Summit on Old US-91 (near I-15), east through Dixie National Forest to SR-143, eight miles south of Parowan on the Utah's Patchwork Parkway National Scenic Byway.

(57) Mojave Desert/Joshua Tree Road Scenic Backway. From Old US-91, two miles south of Shivwits, south around Jarvis Peak and west back to Old US-91, two miles north of the Utah/Arizona State Line.

(58) Snow Canyon Road Scenic Backway. From Ivins north through Snow Canyon State Park to SR-18.

KEY: transportation, scenic byways, scenic backways, highways
August 22, 2011 72-4-303
Notice of Continuation August 3, 2016 63G-3-201

R940. Transportation Commission, Administration.
R940-5. Approval of Highway Facilities on Sovereign Lands.
R940-5-1. Authority.

This rule is required by Section 72-6-303 and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R940-5-2. Purpose.

(1) This rule establishes minimum guidelines for the Commission to consider when reviewing a proposed plan to construct a highway facility over sovereign lakebed lands as part of an application to lease sovereign land through the Division of Forestry, Fire and State Lands of the Department of Natural Resources, as provided in Section 65A-7-5.

(2) When considering a proposed plan to construct a highway facility over sovereign lakebed lands, it is the obligation of the Utah Transportation Commission to safeguard the public interest by thoroughly evaluating the financial viability of the project to ensure the project can be constructed and completed as proposed, that the project can be completed within the proposed time frame, to ensure the long-term viability and operability of the project by the proposer; and to ensure that the facility is safe and meets current engineering standards for design, construction, operation, and maintenance.

(3) Commission approval of a plan to construct a highway facility over sovereign lakebed lands does not constitute approval of an application to lease state lands by the Division of Forestry, Fire and State Lands as provided under Section 65A-7-5. Issuance of surface leases of state lands is determined separately under a process determined by the Division of Forestry, Fire and State Lands as provided under state law and administrative rule.

R940-5-3. Definitions.

Except as otherwise stated in this rule, terms used in this rule are defined in Section 72-6-302. The following additional terms are defined for this rule.

(1) "Commission" means the Utah Transportation Commission, created in Section 72-1-301.

(2) "Department" means the Utah Department of Transportation, created in Section 72-1-101.

(3) "Proposed plan" means a plan submitted by a private entity to the Commission for approval to construct a highway facility over sovereign lakebed lands.

(4) "Proposer" means the private entity that submits an application to the Commission.

R940-5-4. Submission of Proposed Plan and Application.

(1) The Commission may accept delivery of a proposed plan to construct a highway facility over sovereign lakebed lands as part of an application to lease sovereign land through the Division of Forestry, Fire and State Lands.

(2) The proposer must submit a minimum of 20 copies of the proposed plan to the Commission.

(3) The proposed plan must be submitted to the Commission in a format that corresponds to the required information contained within this rule and must contain the specific information requested under this rule. Any supporting documentation not required under this rule may be submitted in an appendix.

R940-5-5. Preliminary Review of the Qualifications and Financial Resources of the Proposer.

(1) The Commission will conduct a preliminary review of the proposed plan to determine the qualifications and financial resources of the proposer.

(2) The proposer must submit the following information:

(a) a description of the legal structure of the proposer, including equity ownership structure of the entity;

(b) information on third-party consultants (five page limit per entity), including investment bankers, lawyers, engineers, traffic consultants and other entities that will provide information necessary for the submission of the proposed plan. Consultant information must include the contact information, experience and a brief biography of each individual consultant, and must describe the prior experience of similar projects for each consulting firm (the submission must contain a letter, printed on company letterhead and signed by an officer of the respective firm, stating that the firm has been retained by the proposer to do the scope of work required and detail the elements of the said scope);

(c) a maximum two-page description of the physical elements of the proposed project;

(d) a maximum two-page description of the permitting and environmental elements of the proposed project;

(e) a maximum five-page description of the funding and finance plan for the proposed project;

(f) an explanation of whether the proposer plans to own the asset for at least the first 10 years of the operation. If not, provide a description of the proposer's plan to transfer or otherwise sell part or all of the asset to other entities;

(g) information describing the financial strength of the proposer, including:

(i) a comprehensive budget for the preliminary developmental elements of the proposed project, including but not limited to:

(A) preliminary design and engineering (30 percent);

(B) traffic and revenue study;

(C) financial plan and pro-formas for the life of the project;

(D) independent engineer's report;

(E) permitting and other preliminary environmental work;

(F) proposer staff budget, including a list of the staff members and proposed budget;

(G) an estimate of the cost to review the proposed plan by the Utah Department of Transportation; and

(H) a timeline of the aggregated development budget payments, including all elements required through financial close;

(ii) proof of financial sufficiency showing that the proposer's corporate entity has sufficient funds to pay for the items listed in the comprehensive development budget and at the required times shown in the budget timeline. If development funds are to come from third parties, present proof of financial sufficiency for those entities;

(h) a statement whether the proposer will indemnify the state and what resources are at the proposers disposal to backstop the indemnification;

(i) terms the proposer seek from the state for the sovereign state lands impacted by the proposed plan;

(j) the type and amount of insurance that will be carried by the proposer.

R940-5-6. Final Review of Final Statement of Qualifications and Financial Resources, and Final Review of Technical Proposal.

(1) As specified under section 72-6-303, the proposer must submit the following information:

(a) a map indicating the location and legal description of the highway facility and all proposed interconnections with other highway facilities;

(b) a description of the highway facility, including the conceptual design of the highway facility and a statement whether the facility will be operated and maintained as a tollway facility;

(c) a list of the major permits and approvals required for developing or operating improvements to the highway facility from local, state or federal agencies and a projected schedule for obtaining the permits and approvals;

(d) a description of the types of public utility facilities, if any, that will be crossed by the highway facility and a statement of the plans to accommodate the crossing;

(e) a description of the types of public utilities used, carried, or accommodated by the highway facility and a statement of the plans to use, carry or accommodate the public utilities;

(f) an estimate of the design and construction costs of the highway facility;

(g) a statement setting forth the private entity's general plans for constructing, operation, and maintaining the highway facility, including:

(i) the proposed date for development, operation, or both of the highway facility ;

(ii) the proposed term of the lease over sovereign lakebed lands; and

(iii) a demonstration by the private entity that the proposed plan is financially viable;

(h) the names and addresses of the persons who may be contacted for further information concerning the highway facility application.

(i) demonstration that the proposed highway facility is contained within the long-range highway plan prepared by the Department or by a metropolitan planning organization, including the visionary long-range highway plan.

(j) a statement whether or how the highway facility can safely accommodate recreational fishing or other recreational activities on the highway facility.

(2) The commission also requires the following information:

(a) a copy of the agreement entered into by the Department and the proposer, pursuant to Section 72-6-303, demonstrating that the proposed construction plan meets engineering and design standards specified by the Department, including authorization for the Department to assure the safety of the design, construction, operation, and maintenance of the facility;

(b) proof of a performance bond issued for the project pursuant to the provisions of Section 63G-6-505 and 507;

(c) verification of executed steps identified in the funding and finance plan required and submitted as part of the Preliminary Review required under R940-5-5 necessary to complete proof of financial strength of the proposed plan (for example, if the funding and finance plan submitted under the Preliminary Review states that the proposer would have a letter of credit available for a portion of the funding and financing plan, and the proposer had demonstrated during the Preliminary Review that such proof is available, the Commission will likely require the letter of credit executed and delivered as part of Final Review required under this part);

(d) final submission of information requested by the Commission under the Preliminary Review; and

(e) any additional information required by the Commission and posted by the Commission on the Department's website necessary to determine the feasibility and financial viability of the proposal.

R940-5-7. Review of Proposal.

(1) As part of the Commission review of a proposed plan to construct a highway facility over sovereign lakebed lands, the Commission will consider the public interest to ensure the proposed plan is feasible, financially viable, and that the facility is safe by meeting current engineering standards. At the same time, the Commission will provide timely review of the proposed plan to help meet business time lines and provide greater certainty for the proposer.

(2) The Commission reserves the right to require or permit the proposer to submit revisions, clarifications, or supplementals of the proposal during the review process.

(3) The Commission may appoint a committee of its members to evaluate a proposal for recommendation to the full Commission.

(4) The Commission shall consider recommendations made by the Department, including whether the highway construction plan contained within the proposal meets engineering and design standards outlined in an agreement entered into by the Department and the proposer.

(5) The Commission may, at any time in its sole discretion, refuse to review an application if the proposal fails to meet the guidelines established in Section 72-6-303 and this rule.

R940-5-8. Approval of Proposed Plan.

(1) The Commission shall not approve any proposal until the proposer has entered into an agreement with the Department as required in Section 72-6-303.

(2) If the Commission approves a proposal:

(a) a notice will be given to the proposer;

(b) the notice will be posted on the Department's website; and

(c) a copy of the notice will be given to the Division of Forestry, Fire and State Lands.

KEY: highway, construction, lakebed, sovereign lands
September 15, 2011 72-6-303
Notice of Continuation August 3, 2016

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment and job search activities.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, regularly watches children other than her own, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(8) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(9) If a client uses a child care provider at least eight hours by the 15th of the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month even if the client changed providers. However, if it is the provider that decided not to provide care and the client is required to change providers, the Department may pay that second provider for a portion of that same month.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(h) any provider disqualified under R986-700-718;

(i) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider; or

(j) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-1-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least three years.

(4) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated

the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for one year without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(6) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(7) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their child care rates to the local Care About Child Care agency.

(8) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Provider Guide and in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a child is no longer in child care;

(ii) a child was not in child care during that month;

(iii) that the provider decided not to charge the full subsidy amount for one month. The provider should notify the Department and the difference will be deducted from the next payment;

(iv) that a child attended for less than eight hours by the 15th of the month, payment for the month was received and the child is not expected to return; or

(v) a change in financial institution account information for direct deposit.

(9) Providers must submit a W-9 Form if required by the Department and a 1099 will be issued annually.

(10) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment and Transitional Child Care.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level including families receiving Homeless Families CC under rule 986-700-712;

(b) clients receiving transitional child care; and

(c) clients receiving FEP CC.

(6) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP CC.

FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business

records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the copayment amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the subsidy amount. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.

(7) Clients must meet the CCDF asset limit.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis

situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not possible.

(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider, or the parent and provider in the case of a two party check, may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718. A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days or the provider does not notify the Department within ten days of the end of the month when the child was not in care at least eight hours that month. If the client does not use at least eight hours of child care by the 15th of the month but uses at least eight hours of child care after the 15th of the month, it may result in a partial overpayment for that month.

(3) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(4) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(5) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(6) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(7) If a provider receives and retains three overpayments in a rolling 12 month period, the provider will be taken off the approved provider list until all outstanding overpayments are paid in full, even if the time frames outlined in subsection (3)(b)(i) of this section have not expired.

(8) If a provider fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of seven hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being

liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the eligibility criteria.

(2) JS CC is available for a maximum of two additional months provided the client:

(a) was employed at least 32 hours per week and was separated from his or her job;

(b) was receiving ES CC or Transitional Child Care (TR CC) in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second month of CC will be paid while the client looks for a job.

(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.

(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job.

(6) Two parent households are not eligible for JS CC.

(7) The JS CC copayment will be at the lowest copayment amount required by the Department disregarding all earned income.

(8) A client who is receiving TR CC when the job separation occurs, and meets the requirements of this section, can be eligible for a maximum of two months of JS CC but those two months will count against the six month maximum under TR CC as provided in R986-700-707. If the job separation occurs in the last month of TR CC, the client can be eligible for JS CC which would be in addition to the TR CC.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted.

(3) The provider must state in writing, based upon the

provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers and other persons required to submit a fingerprint card under these rules must submit a new fingerprint card and fee every five years. In addition, the Department may conduct background screening annually.

(5) If CCL takes an action adverse to any covered individual based upon the background screening, CCL will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

R986-700-776. Intergenerational Poverty School Readiness Scholarship Program.

(1) Scholarships are available, as funding permits, for a child who

(a) will be four years of age on or before September 2 of the school year in which the individual intends to participate in a school readiness program;

(b) has not entered kindergarten; and

(c) is experiencing intergenerational poverty, as determined by the Department.

(2) The Department will mail scholarship applications to individuals who the Department has identified as potentially eligible and who live in an area where one or more high quality preschool programs is available. Individuals who do not receive an application from the Department may still apply by contacting the OCC and requesting an application. The Department will notify potential applicants of the due date for filing a completed application.

(3) An applicant may be required to show that transportation to a high quality preschool program is available if the child does not live within a reasonable commuting distance from the high quality preschool.

(4) An applicant may be required to provide verification and supporting documentation if necessary to determine eligibility.

(5) The value of the scholarship will be determined by which program the parent chooses.

(6) Scholarships are transferable however funds cannot be prorated during a given month. So if a child attends one day or more during a given month at one program, and wishes to transfer to a second program at any time during that month, the full scholarship payment will be made to the first program.

(7) Payment will be made directly to the high quality preschool provider. The provider must send the OCC an invoice at the end of the month, or as soon thereafter as feasible, when services were provided.

R986-700-777. Prioritizing Criteria.

If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

KEY: child care
August 25, 2016 35A-3-310
Notice of Continuation September 3, 2015 53A-1b-110

R994. Workforce Services, Unemployment Insurance.
R994-403. Claim for Benefits.
R994-403-101a. Filing a New Claim.

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday of the week in which the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday of the week in which the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) With the exception of subsection (3), benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA. Each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify; and

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower.

(3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department, unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the Sunday of the week the claimant failed to comply and will continue through the Saturday prior to the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the decision date.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

(i) A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(ii) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and reasonable assurance of returning to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. A claimant is presumed to have reasonable assurance of employment if he or she previously worked for the employer and there has been no change in the conditions of his or her employment which would indicate severance of the employment relationship. The deferral should generally not extend longer than ten weeks. To extend beyond ten weeks, the claimant must have earned at least half of his or her base period earnings with the employer in question and the employer must submit a request to the department.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(f) Department approval.

If Department approval is granted under the elements of R994-403-202, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant contacts the Employment Center to arrange participation in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved

schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(6).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-

time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(ii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Type of Work and Wage Restrictions.

(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(5) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(6) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(7) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(8) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is

seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(9) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(10) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, a claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work means that the claimant must make a minimum of four new job contacts each week unless the claimant is otherwise directed by the unemployment division. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort extends beyond simply making a specific number of contacts to satisfy the Department requirement.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work:

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility;

(4) must immediately notify the Department if the claimant is incarcerated; and

(5) must keep a detailed record of his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:

(a) the date of the contact,

(b) the name of the employer or other identifying information such as a job reference number,

(c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available,

(d) details of the position for which the claimant applied,

(e) method of contact, and

(f) results of the contact.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks. The claimant will be disqualified for any week during which he or she fails to provide the information required under R994-403-114c(5).

(3) If the Department seeks verification of a job contact from an employer, the claimant will only be disqualified if the employer provides clear and convincing evidence that there was no contact.

(4) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the

base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. The Claimant is required to return telephone calls and respond to requests that are made electronically, verbally, or by U.S. Mail. Generally, claimants will be given 48 hours, excluding hours during weekends or legal holidays, to respond to requests made verbally or electronically and five (5) full business days to respond to requests mailed through the U. S. Mail.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department does not have sufficient information to determine eligibility. Except as provided in subsection (5) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer or agent fails to provide adequate information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's or agent's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer or agent has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's control.

R994-403-123. Obligation of Department Employees.

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). Once the claimant is actually in training, benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if

the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

R994-403-302. Foreign Travel.

(1) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(2) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country.

(3) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

KEY: filing deadlines, registration, student eligibility, unemployment compensation
August 25, 2016 35A-4-403(1)
Notice of Continuation May 16, 2013